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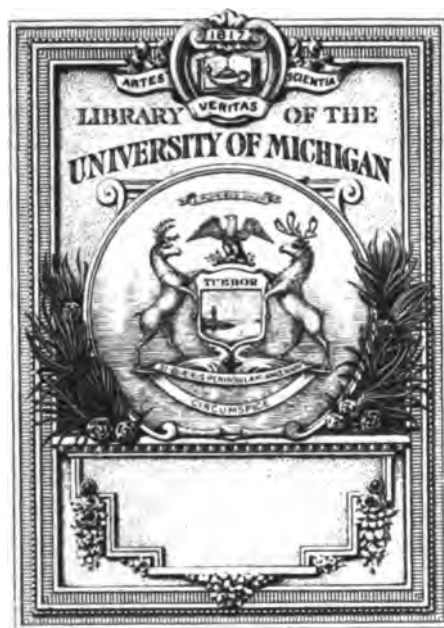
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Proceedings of the First Annual Meeting

American

Association for Labor Legislation

Madison, Wis., December 30-31, 1907.

PAPERS.

- | | |
|---|-----------------------|
| I. Economic Theory and Labor Legislation. | Richard T. Ely. |
| II. The Normal Work Day in Coal Mines. | Thomas K. Urdahl. |
| III. Workingman's Insurance in Illinois. | Charles R. Henderson. |
| IV. A Program of Social Legislation. | Henry R. Seager. |

Madison, Wisconsin.
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General

THE AMERICAN ASSOCIATION FOR LABOR LEGISLATION.

REPORT COVERING THE PERIOD 1902-1907.

The American Section of the International Association for Labor Legislation was organized February 15, 1906. Previous to this time Hon. Carroll D. Wright, then United States Commissioner of Labor, was the American Representative of the Association. There were seven American correspondents of the International Association, namely, Professors Farnam, Jenks, Taussig, Warner, Willoughby, Mr. Clinton Rogers Woodruff, and Dr. Adna F. Weber, of the Department of Labor, New York.

In October, 1905, Dr. Weber addressed a letter to the other correspondents concerning the advisability of organizing a Section, and a meeting was called for December, 1905. At this meeting, held in connection with the American Economic Association, it was decided to organize an American Section, and a committee was appointed, consisting of Clinton Rogers Woodruff, Henry W. Farnam, Henry R. Seager, Richard T. Ely, with Adna F. Weber as Chairman. Dr. Weber called a general meeting for February 15, 1906. About thirty-five persons were present at this meeting and a definite organization was formed, with Richard T. Ely as President, Adna F. Weber, Secretary, and Isaac N. Seligman as Treasurer. It was voted to have nine vice-presidents, and a General Administrative Council, consisting of twenty-five members.

Rec'd 3-8-30 A.V.M.

From this time the membership increased and reached about two hundred in December, 1907. At the first annual meeting, held in Madison, December 30-31, Henry W. Farnam was elected President, John R. Commons, Secretary, Irene Osgood, Assistant Secretary, and Lucien S. Hanks, Treasurer. Owing to the resignation of Dr. Weber as Secretary, the headquarters were moved from New York City to Madison, Wis. The constitution was amended to authorize the forming of local sections in each state; the General Administrative Council was enlarged to fifty, and a Local Executive Committee was formed to coöperate with the Secretary.

The papers read at this meeting by Professors Ely, Henderson, Urdahl, and Seager form the second part of this report.

THE GENEVA CONFERENCE AND PROGRAM OF THE INTERNATIONAL ASSOCIATION FOR LABOR LEGISLATION.

At the conference of the International Association held at Geneva, September, 1906, Robert Hunter represented the American Section. At this meeting resolutions were passed advising the different sections to take up the following subjects for investigation and report:

1. The Administration of Labor Laws.
2. Employment of Children.
3. Night Work of Young Persons.
4. Legal Maximum Working Day.
5. Home Work.
6. Industrial Poisons.
7. Workingmen's Insurance.

It has been impossible for the American Section to deal with all of these subjects. Professor Henry R. Seager has collected reports on the administration of labor bu-

reus of the States of New York, Massachusetts, Pennsylvania, and Oregon. These will be published in a forthcoming bulletin of the International Office. Plans have been formulated for an investigation into industrial accidents, diseases, and poisons. Other investigations are under way, but not yet ready for publication.

PUBLICITY.

Besides the *Bulletin of the International Labor Office*, the American Section has arranged for a Department on Labor Legislation in *Charities and the Commons*, to be conducted by the Secretary. Monographs and bulletins on various subjects will be prepared and printed by the Wisconsin Bureau of Labor Statistics.

FINANCIAL.

The American Association for Labor Legislation is supported entirely by membership fees and voluntary subscriptions. Most of the European Sections receive subventions from their governments. The United States Government formerly contributed \$200 a year to the International Association.

The work of the American Association is becoming more and more valuable to the different State Bureaus by promoting sound legislation and in establishing equality between the different states, in labor legislation. It is to be hoped that subventions may soon be received from the different State Bureaus. Several individuals, who have felt the importance of the work of the Association, have also contributed sums ranging from \$3.00 to \$100.00. We desire this class of subscriptions to increase constantly.

CONSTITUTION.

AMERICAN ASSOCIATION FOR LABOR LEGISLATION.

Adopted Feb. 15, 1906.

Amended Dec. 30, 1907.

At the First Annual Meeting the Constitution was amended to read as follows:

ARTICLE I. NAME.

This Society shall be known as the American Association for Labor Legislation.

ARTICLE II. OBJECTS.

The aims of this Association shall be:

1. To serve as the American branch of the International Association for Labor Legislation, the aims of which are stated in the appended Article of its Statutes.
2. To promote the uniformity of labor legislation in the United States.
3. To encourage the study of labor legislation.

ARTICLE III. MEMBERSHIP.

Members of the Association shall be elected by the Local Executive Council. Eligible to membership are individuals, societies and institutions that adhere to its aims and pay the necessary subscriptions. The minimum annual fee for individuals shall be one dollar, or three dollars if the member wishes to receive the Bulletin of the International Association. The minimum annual fee for societies and institutions shall be five dollars, and they shall receive one copy of the Bulletin, and for each two-dollar subscription an additional copy.

ARTICLE IV. OFFICERS.

The officers of the Association shall be a president, ten vice-presidents, a secretary and a treasurer. There shall be also a General Administrative Council consisting of the officers and not less than twenty-five nor more than fifty other persons. The General Administrative Council shall have power to fill vacancies in its own ranks and in the list of officers; to appoint an executive committee from among its own members and such other committees as it shall deem wise; to appoint a Local Executive Council of five members to

coöperate with the secretary; to frame by-laws not inconsistent with this constitution; to choose the delegates of the Association to the Committee of the International Association; to conduct the business and direct the expenditures of the Association. It shall meet at least twice a year and on each occasion shall determine the date of the succeeding meeting. Eight members shall constitute a quorum.

ARTICLE V. LOCAL SECTIONS.

Local Sections of this Association may be constituted in any city or state upon certification by the secretary and the Local Executive Council. They shall be governed by the following by-laws:

SECTION 1. The name of this Association is the _____
Section of the American Association for Labor Legislation.

SEC. 2. Eligible to membership are members of the American Association for Labor Legislation residing in _____. Members of the American Association for Labor Legislation become members of this local by vote of the Executive Committee of this local section.

SEC. 3. The purpose of this section is to promote the work of the American Association for Labor Legislation in general, also in special relation to the needs of the state of _____.

SEC. 4. Expenses of this section shall be met by voluntary contributions of members and others.

SEC. 5. The officers of this section shall be a president and a secretary-treasurer, who, with three other members, shall constitute the Executive Committee.

SEC. 6. The Executive Committee shall administer the affairs of the section and report at annual or called meetings of members of the section. It shall be the duty of the Executive Committee to arrange programs for discussion of members, to institute and direct investigations, to take measures to increase the membership of the American Association for Labor Legislation, to promote publicity of the policies and recommendations of the American Association for Labor Legislation by publications and meetings.

SEC. 7. An annual meeting of the section for election of officers and for other business shall be held in October of each year.

SEC. 8. These by-laws may be amended at any annual or called meeting of the section, notice of the proposed amendment having been sent to each member at least one month in advance.

ARTICLE VI. MEETINGS.

The annual meeting and other general meetings of members shall be called by the council and notice therefor shall be sent to members at least three weeks in advance. Societies and institutions shall be represented by two delegates each. The annual meeting shall elect the officers and other members of the council.

Amendments to the constitution after receiving the approval of the council may be adopted at any general meeting. Fifteen members shall constitute a quorum.

**ARTICLE II OF THE STATUTES OF THE INTERNATIONAL ASSOCIATION FOR
LABOR LEGISLATION DEFINING THE AIMS OF THE ASSOCIATION.**

1. To serve as a bond of union to those who, in the different industrial countries believe in the necessity of protective labor legislation.

2. To organize an International Labor Office, the mission of which will be to publish in French, German and English a periodical collection of labor laws in all countries, or to lend its support to a publication of that kind. This collection will contain:

(A) The text or the contents of all laws, regulations and ordinances in force relating to the protection of workingmen in general, and notably to the labor of children and women, to the limitation of the hours of labor of male and adult workingmen, to Sunday rest, to periodic pauses, to the dangerous trades;

(B) An historical exposition relating to these laws and regulations;

(C) The gist of reports and official documents concerning the interpretation and execution of these laws and ordinances.

3. To facilitate the study of labor legislation in different countries, and, in particular, to furnish to the members of the Association information on the laws in force, and on their application in different states.

4. To promote, by the preparation of memoranda or otherwise, the study of the question how an agreement of the different labor codes, and by which methods international statistics of labor may be secured.

5. To call meetings of international congresses of labor legislation.

ORGANIZATION AND WORK OF THE AMERICAN
ASSOCIATION FOR LABOR LEGISLATION

- I. **COLLECTION, CLASSIFICATION AND CATALOGING OF DATA AND MATERIAL** with coöperation of Wisconsin Legislative Reference Department.
 - A. *Laws and Administrative Rules.*
 1. Of all states and foreign countries arranged by subjects.
 - B. *Critical and Explanatory Data.*
 1. Court briefs and decisions.
 2. Opinions and criticisms of administrative officers.
 3. Decisions of attorneys general.
 4. Clippings, letters, statistical data bearing upon the history, the efficiency or deficiencies of legislation and administration.
 - C. *Bibliographical.*
 1. Books and articles, card cataloged up to date.
 2. Record of investigations throughout the world.
- II. **INVESTIGATION WORK.**

By special workers and field investigation with coöperation of Labor Bureaus, Factory Inspectors, Manufacturers' Associations, Labor Unions, Settlements, Social Workers, Charity Organization Societies, Medical Colleges, Associations and Boards for health and sanitation, Economists, American Bureau of Industrial Research, Carnegie Institution, Legislative Reference Bureau, Actuaries, Societies for Industrial Education, State and Local Branches of American Association for Labor Legislation.

 - A. *Working of Present Laws in America.*
 1. Preparation of monographs, bulletins, bibliographies.
 - B. *Investigations as to the necessity for other remedies or preventive measures.*
 1. Uniformity and adequacy of accident and vital statistics.
 2. Uniformity and efficiency of Bureaus of Labor.
 3. Industrial Health and Efficiency, prevention of diseases, poisons, etc.
 4. Insurance, unemployment and other measures.
- III. **PUBLICITY.**
 1. *Bulletin of the International Labor Office*, \$2.00 per year.
 2. *Charities and the Commons*; Current Items, reviews and special articles, \$2.00 per year.
 3. Wisconsin Bureau of Labor, Monographs to be published as separates and afterwards in Biennial Reports.

ECONOMIC THEORY AND LABOR LEGISLATION.

RICHARD T. ELY.

It is in every way fitting that the first annual meeting of the American Association for Labor Legislation should be held in connection with the annual meeting of the American Economic Association. Steps were taken to organize the American Association for Labor Legislation at the Baltimore meeting of the American Economic Association;¹ and the committee appointed at that time to effect the organization consisted of members of the latter association, as do nearly all the members of our Association. Thus the old Association is the parent of the younger in a direct and very obvious way. But other reasons for the fitness of this joint meeting, although they lie less on the surface, are quite as important.

The joint meeting with the American body which represents the science of economics in the United States at once suggests a connection between economic theory and labor legislation. As a matter of fact when the American Economic Association was organized at Saratoga, on the 9th of September, 1885, the Constitution embraced a Statement of Principles, which was adopted as not in any sense a creed but "as a general indication of the views and the purposes of those who founded" the Association. The following is a quotation from this "Statement of Principles":

"We hold that the conflict of labor and capital has

¹ In 1905.

brought into prominence a vast number of social problems whose solution requires the united efforts, each in its own sphere, of the church, of the state, and of science."

It is thus stated, in effect, that the labor question, or—more accurately—the many labor problems of our time require legislation, and it is obviously implied that economic science must furnish guidance to legislation. This clearly shows that in 1885 the economists of the country, generally speaking, assumed no attitude of antagonism to labor legislation, nor have the professorial and professional economists of this country, except in isolated instances, assumed any attitude of antagonism to labor legislation as such since that time. The Statement of Principles was dropped later and that without opposition, because even those who proposed and especially favored it at first, felt that they had won their battle and that the Statement had accomplished its purpose. While there was some opposition to the American Economic Association based on general grounds which cannot be here discussed, and while there was some opposition in the press and on the part of a few economists to the position taken with respect to labor legislation, it is significant that no opposition to the formation of the American Association for Labor Legislation made itself heard, and that among the economists who took an active part in its formation were men who would perhaps generally be designated as "hard-headed"—whatever that may mean—and conservative. Yet ours is an association the very title of which assumes the necessity and desirability of labor legislation. While it is true that the economists of 1885 were in favor of "wise and sane" labor legislation, a perusal of the published utterances of 1885 with reference to the American Economic Association shows that since that time a sur-

prising change of public opinion has taken place, and in my own opinion, this change is an evidence of the influence the economists have exerted—an influence the magnitude of which furthermore in my own opinion—for I do not assume to speak for anyone else—the economists themselves frequently do not fully appreciate.

But what has been the position of economic theory in the past with regard to labor legislation? Has it been, as popularly supposed, hostile to such legislation? Or has it been as hostile as popularly supposed? Manifestly, it is quite out of the question now and here to enter exhaustively into this chapter in the history of economic thought, but the general drift of economic theory may be briefly indicated.

The economists of the latter half of the 18th century who founded modern political economy as a distinct and separate branch of knowledge, Quesnay and his associates, Adam Smith and his associates, were opposed to what is called legislative interference in the realm of the economic life. And they opposed, generally speaking, labor legislation. They favored, as we all know, a passive policy of government and used as a maxim *laissez-faire*. But how often does the same phrase, term, or watchword mean one thing in one stage of evolution and quite the opposite in a later! We must not at once, then, jump to the conclusion that we have to do in the case of these men with any antagonism to the interests of labor. In fact, these men were such warm-hearted humanitarians, that they would perhaps scarcely rank among the "hard-headed" economists. One has only to read their lives and to follow closely their writings to become entirely convinced that they had, in high degree even, what is now called "the enthusiasm of humanity", and were animated with a passionate desire for

improvement in human affairs and particularly for the uplift of the lower orders.

The eighteenth century economic philosophy was, however, as we all know, based on a now discredited and discarded belief in a beneficent code of nature, ruling the economic life as all other social life spheres, and which, if not interfered with, would bring to all classes and especially the workers, the maximum amount of economic well-being. But in addition to this general view, we have as an explanation of their position the multitude of restrictions, and old-established monopolies and special privileges which oppressed the manual toiler and to the removal of which they directed their attention. It is noteworthy that Turgot, notwithstanding his general negative economic philosophy, favored a system of public education which France did not achieve for a hundred years, and which a modern economist has said reminds one of socialist demands, while Adam Smith, in denouncing labor laws, said if a labor law chanced to be in the interest of labor it was sure to be a just law. How different is the position of a man, who, in denouncing labor laws, has in mind laws oppressive to labor, from the position of a man a century later who, in denouncing labor legislation, has in mind laws passed in the interest of labor!²

² That we must always bear in mind the circumstances of time and place when we discuss economic theory and its relations to social interests in general and to labor in particular, is strikingly shown in the designation "Liberal School of Political Economy" in the history of economic thought. This designation is frequently applied to Adam Smith and his followers, the classical economists in England, and their adherents elsewhere. Thus Eisenhart entitles the second book of his *Geschichte der Nationalökonomik* "Critical-Liberal Individualistic Period" (*Kritisch-liberale, individualistische Periode*). In this connection the word "liberal" now carries with it the implication of an extreme conservatism, yet at one time "liberal

When it comes to the evils of monopoly, the words of Adam Smith would, I fear, if repeated as original utterances by economists of our own day, be denounced by some newspaper writers as demagoguery. "Malignant and invidious", "malignant and mean" are epithets which he used in describing the monopolistic policy pursued by his own country with reference to a powerful company, namely, the East India Company.

It would be interesting to go into the theories of distribution of the writers we are now discussing and to examine them with reference to the possibilities of labor legislation, but the time is too brief. It may, however, safely be said that while Turgot's theory of wages does not leave a very wide margin for an increase of the remuneration of labor, there is nothing in these theories which, if true, would necessarily preclude a substantial improvement in the position of the wage-earner.

The development of classical political economy in England, in the first half of the 19th century, marks an epoch in the history of economic theory in its relation to labor legislation. Two theories were brought forward, elaborated and emphasized so strongly as to enter into popular consciousness and to become part and parcel of the working capital of powerful groups of newspaper writers, publicists, and legislators; and these two doctrines were used against trade-union policies and legislation alike. Every economist at once knows that I refer to the theory of population associated with the name of

school doctrines" were really liberal. They became conservative by changes in the evolution of economic society.

It is interesting to notice a similar change in the term "liberal" as applied to a very conservative political party in Germany, so that the term "liberal" in that country at least has very often come to carry with it the idea of an excess of conservatism.

Malthus and to the wages-fund theory. While the wages-fund theory, as found in most writers, was more or less vague and frequently indistinct in its outlines and even, I think we may say, elusive, it was gradually elaborated in the development of economic thought and became something very real, very definite, tangible, in the writings of popularizers, and it was thus an effective weapon in the hands of opponents of protective labor legislation. As Professor Taussig has shown in his history of the theory,³ the great economists generally did not hold this doctrine in such form as necessarily to preclude on their part legislative efforts to improve the lot of the wage-earner; it did receive in many places in Mill's *Political Economy* a precise form and was so stated by him that its natural tendencies were antagonistic to the Factory Acts. Undoubtedly, it is likewise true that Mill gave the most clear-cut formulation of it when he renounced it; but this very renunciation showed its possible popular uses.

Malthus demonstrated, as he thought, the existence of a powerful force immanent in mankind, the working of which tended to increase population beyond the means of subsistence; and he maintained that the operation of checks to the growth of population kept some kind of equilibrium between food supply and mouths clamoring for food. Misery, vice, war, pestilence, famine, and the like constituted the one class of checks; prudential restraints of a variety of kinds constituted the other class of checks. Every measure had then to be examined with reference to its effect on the growth of population; and if labor legislation rendered the lot of the laborer more desirable for the time being, but increased population, there was always danger, so it was claimed, that the total final effect would be simply a larger population—but, by

³ Part II of his *Wages and Capital*.

reason of the pressure on the means of subsistence, not a more prosperous population. How easily this could lend itself to "the special pleaders of capital"—if we may employ this expression—is readily apparent. Easy indeed was it for the penny-a-liner to rail at the humanitarian. Let the people exercise self-control in the matter of marriage and, by establishing a better proportion between the means of subsistence and mouths to be fed, improve their own lot! Or why adopt measures, temporarily benefiting the wage-earner, but eventually pulling all classes down to his dead level?

But the adverse influence of the Malthusian theory of population upon labor legislation made itself felt in the minds and utterances of those who were warm humanitarians and who were among the truest friends of labor of the nineteenth century. Apprehension of the dire possible effects upon the growth of population of apparently beneficial labor legislation always cast a shadow over the generally hopeful anticipations of John Stuart Mill. If the check to population were weakened by measures, otherwise seemingly beneficent, the ultimate result according to Mill would be that it would remove "everything which places mankind above a nest of ants or a colony of beavers".⁴ Mill would have been ready enough—as he tells us in the same chapter of his *Political Economy* from which I have just quoted—to favor even such a measure as a legally established minimum of wages, had he not feared that as a result we should have overpopulation.

The wages-fund theory supplemented the theory of population so completely as to convey to many minds a clear conviction of the futility of all labor legislation. A certain fund of capital was set aside for the payment of

⁴ *Political Economy*, Book II, Ch. XII, Sec. 2, p. 220, People's Ed.

wages, this was distributed among the existing laboring population in any event, and the only way in which substantial improvement in the lot of the wage-earner could take place was to increase the wages-fund relatively to the laboring population. What room was there then for legislation? If wages were raised by law or public opinion without a change in this proportion, the result must be to favor a group of laborers at the expense of other laborers. To quote Mill again: "Since, therefore, the rate of wages which results from competition distributes the whole wages-fund among the whole laboring population, if law or opinion succeeds in fixing wages above this rate, some laborers are kept out of employment."⁵

Cairnes examines the obstacles to improvement found in these theories of wages and capital and in the law of rent, and concludes that only by a change to coöperation, adding profits to wages, can any substantial improvement in the lot of the toiling masses be secured. It is worth while to quote from him at some length, for we are in danger of forgetting the extent to which in their tendencies the teachings of even the leaders of economic thought were opposed to combination and labor legislation. The following is quoted from Cairnes' *Leading Principles*:

"It appears to me that the condition of any substantial improvement of a permanent kind in the labourer's lot is that the separation of industrial classes into labourers and capitalists which now prevails shall *not* be maintained; that the labourer shall cease to be a mere labourer—in a word, that profits shall be brought to reinforce the wages-fund. I have shown that, in order to any improvement at all of a permanent kind, a restraint must be enforced on population which shall prevent the increased demands for subsistence from neutralizing the

⁵ Mill: *Political Economy*, Book II, Ch. XII, Sec. 1, p. 219, People's Ed.

gains arising from industrial progress; and that even a very great change in this respect in the habits of the people—a change far greater than there are any good reasons for anticipating—would still leave them, while they remain mere labourers, in a position not very materially better than at present. But the significance of these considerations becomes much enhanced when they are connected with another doctrine established in a former chapter of this work. It was there shown, that, in the order of economic development, the wages-fund of a country grows more slowly than its general capital. Now the wages-fund of a country represents the means of the labouring classes as a whole; the general capital, the means of those who live upon profit—we may say broadly of the richer classes. It appears, therefore, that the fund available for those who live by labour tends, in the progress of society, while growing actually larger, to become a constantly smaller fraction of the entire national wealth. If, then, the means of any one class of society are to be permanently limited to this fund, it is evident, assuming that the progress of its members keeps pace with that of other classes, that its material condition in relation to theirs cannot but decline. Now, as it would be futile to expect on the part of the poorest and most ignorant of the population self-denial and prudence greater than that actually practised by the classes above them, the circumstances of whose life are so much more favourable than theirs for the cultivation of these virtues, the conclusion to which I am brought is this, that, unequal as is the distribution of wealth already in this country, the tendency of industrial progress—on the supposition that the present separation between industrial classes is maintained—is towards an inequality greater still. The rich will be growing richer; and the poor, at least relatively, poorer. It seems to me, apart altogether from the question of the labourer's interest, that these are not conditions which furnish a solid basis for a progressive social state; but, having regard to that interest, I think the considerations adduced show that the first and indispensable step towards any serious amendment of the labourer's

lot is that he should be, in one way or other, lifted out of the groove in which he at present works, and placed in a position compatible with his becoming a sharer in equal proportion with others in the general advantages arising from industrial progress."⁶

These doctrines are familiar to every economic thinker. I cannot here trace their development, as this is too long a chapter in the history of economic thought.

I should like, were there time, to speak about the wages-fund theory as it was modified by Cairnes, who attempted to rescue it, but succeeded in leaving little meaning to it. I should be glad also if there were time to speak about the able treatment of the wages-fund theory by a former president of the American Economic Association, namely, Professor Taussig, who, while seeing a large amount of truth in the wages-fund theory, finds sufficient elasticity in the possible amount of wealth which may be used for wages to provide for substantial improvement either by trade union action or legislation. It would be especially gratifying to me to discuss the theory of wages of the first president of the American Economic Association, the late General Francis A. Walker. His residual claimant theory of wages stands in no opposition to labor legislation. He himself expressly affirmed the need of positive, resolute action on the part of wage-earners to enable them to secure the full competitive wage. Another former president of the Association, namely, Professor J. B. Clark, has advanced the productivity theory, which is being so much debated at the present time, and this theory also, if true, does not preclude the possibility of substantial improvement on the part of the wage-earner by legislation. There is, in short, no theory of wages now widely accepted by econo-

⁶ Cairnes: *Leading Principles of Political Economy*, pp. 339-40.

mists in this and other lands which in itself need produce opposition to labor legislation.

The theory of population has not been treated with such exhaustiveness and thoroughness by recent economists as has the theory of wages. In fact, in recent literature this theory has been, relatively speaking, neglected by economists. It is, however, generally admitted that there are forces restricting undue growth of population, acting with an ease and readiness little dreamed of by Malthus. Consequently, while the modern economist would probably say that the theory of population cannot be wholly neglected in the discussion of labor legislation, and while he would say that on account of the possible growth of population it is necessary to be prudent and careful, it would be difficult to quote any considerable weighty body of modern economic opinion against "wise and sane" labor legislation.

Two or three things should be very clearly and definitely stated in any discussion of the attitude of the early economists with respect to trade unions as well as with respect to labor legislation. One is that no great economists ever approached the subject with the thought of strengthening capital at the expense of labor. I believe it can be successfully maintained that every one of the really great economists, without exception, has had it in mind to raise wages rather than profits whenever it was necessary to make a choice between the two. Professor Alfred Marshall, in the very opening chapter of his *Principles of Economics*, says that it is "the hope that poverty and ignorance may gradually be extinguished . . . which gives to economic studies their chief and their highest interest".¹ William Nassau Senior, who

¹ Book I, Ch. II, Sec. 2.

perhaps has sometimes been regarded as peculiarly hard-hearted and hard-headed, states, at the age of five and twenty, he "determined to reform the condition of the poor in England". Malthus clearly desired the elevation of the wage-earner, and, while on the whole his views were pessimistic in their tendencies, he believed that a full knowledge of the truth would result in improving the lot of the wage-earner. Ricardo had so much sympathy with the "submerged tenth" as to maintain at his own expense two almshouses.⁸ John Stuart Mill was ready enough to sacrifice the interests of wealth to the laboring population if he could only be convinced that thereby the condition of the masses would be really improved.

Another thing that needs to be borne in mind is that we must draw a sharp line between the teachings of the great economists and the teachings of the smaller men who followed after them, and who, pushing things to apparently logical conclusions, omitted necessary qualification, and exaggerated greatly their errors. We have to do here with "epigones"—if we may borrow the term familiar in German economic literature.

And then we come to those who cannot be strictly called economists at all, but who have attempted to utilize the teachings of the economists for their own purposes. Here we have a still wider departure from the teachings of the masters.

But, while the great economists have been true humanitarians—and there certainly were very few, if any, exceptions—they have been often enough dogmatic, and

⁸In the Preface to his *Treatise on the Circumstances which Determine the Rate of Wages*, J. R. McCulloch says, with apparent sincerity, that the wish to contribute to the improvement of the laboring classes in England alone led him to publish his work.

their dogmatism has been exaggerated by the small men of whom I have spoken. Those who have opposed the real or supposed teachings of orthodox economists have been called by all sorts of epithets, such as socialists, anarchists, muddle-headed, etc. So the late Amos G. Warner met with a good deal of sympathy, when in his classical *American Charities* he said, "from 1850 to 1880 Cromwell's exhortation to the theologians of his time might properly have been addressed to the English economists: 'In the bowels of the Lord, I beseech you, brethren, to consider it possible that you may be mistaken!' Indeed, equivalent exhortations were addressed to them, but without effect".⁹

Many quotations could be given showing the dogmatism of the classical economists; and even those most appreciative of their services cannot deny that in this particular they were guilty of gross error, which has reacted seriously to the impairment of their influence. They did indeed discover a great deal of truth of deep-reaching and far-extending importance; but they little appreciated how much they had left their successors to do.

One fundamental error lay in identifying social laws with the unchangeable laws of external physical nature. Ideas of evolution and relativity had not then entered into the consciousness even of the greatest English economists. The theory of population and the wages-fund theory were nature's laws against which ignorant and presumptuous mortals set themselves in vain in trade union and labor legislation. Notice this, furthermore: the opponents of trade-unionism and labor legislation alike, use *God* and *divine* and *Nature* and *natural* interchangeably, while *artificial* in the sense of *unnatural* would be the term used of any increase of wages for the

⁹ P. 20.

time being brought about by legislation or trade-unionism. James Stirling, in his pamphlet on *Trades Unions*, says that these organizations injure labor whether they fail in securing at once higher wages or whether they succeed in securing a "seeming success"; and he says that in this case the ultimate result is even worse. He tells us the natural limits to wages are set by the laws governing the increase of population and the increase of capital, and we are assured that "the presumptuous mortal, who dares to set his selfish will against divine ordinances, brings on his head inevitable retribution; his momentary prosperity disappears, and he pays, in prolonged suffering, the penalty of his suicidal success".¹⁰

It may be said that Stirling is a mere epigone, but it cannot be successfully maintained that he lacked support on the part of leaders of thought, for we find the careful Cairnes, after discoursing on the barriers to wages found in the wages-fund, the growth of population, and the law of rent, saying, "Against these barriers trades unions must dash themselves in vain. They are not to be broken through or eluded by any combinations, however universal; for they are the barriers set by Nature herself".¹¹ Cairnes, to be sure, speaks of trades unions here, but obviously his argument would hold against labor legislation.

Another doctrine naturally making against labor legislation was the theory of a minimum profit, taught by John Stuart Mill. Any action harmful to capital by restricting its accumulation could only result in the attainment of this minimum with a smaller amount of capital than would otherwise come into existence.

It cannot be denied, then, that the four doctrines con-

¹⁰ P. 36.

¹¹ Cairnes: *Some Leading Principles of Political Economy*, p. 338.

sidered, viz., the Malthusian theory of population, the wages-fund theory, the Ricardian theory of rent, and Mill's theory of a minimum of profits, constituting the framework of accepted economic theory, hemmed in and limited very effectively the hope of improvement by labor legislation. And, as to the force that these theories have had, there can be no doubt on the part of those who have endeavored to secure labor legislation; nor has this force even as yet spent itself. The press, the legislative bodies of our day, and the judiciary, all alike reveal its existence.

But it is to be noticed that men are often better than their theories. McCulloch, an adherent of the classical school who ranks among the epigones, was one of the comparatively few economists to encourage and help the seventh Earl of Shaftesbury in securing the factory legislation of England; and late in life Senior saw the error of his opposition to labor legislation.

Nevertheless, the Earl of Shaftesbury, while acknowledging gratefully the encouragement that he received from McCulloch, mentions particularly the fact that he received very little support from economists generally, while the leaders of the so-called Manchester School, Cobden and Bright, doubtless epigones rather than leaders, were among his opponents. He says: "Bright was ever my most malignant opponent. Cobden, though bitterly hostile, was better than Bright. He abstained from opposition on the Collieries Bill, and gave positive support on the Calico Print-works Bill."¹²

His biographer, Mr. Edwin Hodder, says that his chief opponents "belonged to that party which appeared to look for a social millennium, to be brought about by the rigid application of the dogmas of political economy, and who

¹² Hodder: *Life and Work of the Seventh Earl of Shaftesbury*, Ed. 1886, Vol. II, p. 210.

considered that he was endeavoring to limit freedom of contract, and in other ways unduly to interfere between capital and labour. Miss Harriet Martineau may be quoted as the exponent of the views of this party."¹³

Even McCulloch was not willing to interfere between adults and masters, although he said it was "absurd to contend that children have the power to judge for themselves as to such a matter".¹⁴

The political economists in many instances changed their views later; for example, both Harriet Martineau and Senior. But we clearly see that economic theory restrained them from taking that action which would have been dictated by their sympathies and which, indeed, science itself has subsequently come to approve.

The economic grounds for labor legislation are revealed best when the subject is approached from the viewpoint of contract or the economic bargain, considered particularly in its legal aspect and with respect to underlying economic causes.

Contract is static, not dynamic. Through contract the actually existing economic forces manifest themselves with all their inequalities and injustices. When economic forces make possible oppression and deprivation of liberty, oppression and deprivation of liberty express themselves in contract. Whenever modern slavery or a near approach to modern slavery exists, it assumes almost invariably the form of voluntary contract. One may take up peonage in this country and slavery in Africa and discover regularly contract forms existing as the legal bonds of involuntary servitude. It is the form of freedom clothing slavery. As contract is static, progress must consist at every step in the regulation and control of con-

¹³ *Id.*, Vol. I, p. 517.

¹⁴ *Id.*, Vol. I, p. 157.

tract. Such has been the case everywhere, and in England in particular, but in the civilized world at large an impressive history of social progress can be written showing how at every step it has restricted contract rights and invaded so-called free contract. But notice that it is only the form of freedom which has been violated. The purpose has always been a larger freedom; a true constructive freedom as an opportunity for the expression of powers and a sphere of activity.

The employer in past times thought his liberty invaded when he could not contract for an unlimited number of hours' work for children of any age. Laws forbidding this liberty and establishing schools with compulsory education, when well enforced, free children from oppression and afford them opportunity to develop their powers, to acquire property, and to make contracts later in life; contracts through which more nearly balanced economic forces express themselves. The case which is generally admitted with respect to children was well stated by John Stuart Mill in his *Political Economy* sixty years ago in these words: "It is right that children, and young persons not yet arrived at maturity, should be protected, so far as the eye and hand of the state can reach, from being over-worked. Labouring for too many hours in the day, or on work beyond their strength, should not be permitted to them, for if permitted it may always be compelled. Freedom of contract, in the case of children, is but another word for freedom of coercion. Education also, the best which circumstances admit of their receiving, is not a thing which parents or relatives, from indifference, jealousy, or avarice, should have it in their power to withhold."¹⁵

¹⁵ Mill: *Principles of Political Economy*, Book V, Ch. XI, Sec. 9, p. 578, People's Ed.

The legislation of the civilized world, as a whole, shows acquiescence in the proposition that sanity and moral conditions and hours of labor of women must be regulated, and that for them night work in factories should be sharply limited, if not altogether prohibited; for otherwise uncontrolled economic forces operating through contract deprive them of liberty and of the right to acquire property and lead wholesome lives. No woman desires to work twelve and thirteen hours daily in a factory; and contracts for such toil are involuntary in substance even if voluntary in form. A ten-hour day for women, such as has been passed in Massachusetts and sustained by the Supreme Court of that state, does not deprive "Mary Holmes" of liberty—it affords her liberty. It does not restrict her right to work; it enlarges that right; for it conserves her health and strength and lengthens out the period of profitable work. If she is a mother, it also enlarges the freedom of her children and adds to their efficiency by giving her at least some shreds of time and strength for her family. For one who really understands the facts and forces involved, it is a mere juggling with words and empty legal phrases to maintain the opposite. Realism, based on statistics and scientific investigations, fully sustain the soundness of such labor legislation. There is no better illustration of the lengths to which doctrinaire assumptions may carry an intelligent man, even a man of great capacity, than the position John Stuart Mill took with respect to protective labor legislation for women.

Mill was brought up under the influence of the eighteenth century philosophy of individualism; and the natural equality among human beings, as a corner stone of that philosophy, he attributed to women as well as men. The actual inequality and disadvantage of women in the

economic sphere he could not fail to notice, but this he ascribed to the political and matrimonial subjection of women. He favored, consequently, the emancipation of women from the bonds of custom and law and then he thought that they, as well as men, could take care of themselves in the labor contract without the aid of special protective legislation.

"Among those members of the community", says Mill, "whose freedom of contract ought to be controlled by the legislature for their own protection, on account (it is said) of their dependent position, it is frequently proposed to include women: and in the existing Factory Act, their labour, in common with that of young persons, has been placed under peculiar restrictions. But the classing together, for this and other purposes, of women and children, appears to me both indefensible in principle and mischievous in practice. Children below a certain age *cannot* judge or act for themselves; up to a considerably greater age they are inevitably more or less disqualified for doing so; but women are as capable as men of appreciating and managing their own concerns, and the only hindrance to their doing so arises from the injustice of their present social position. So long as the law makes everything which the wife requires, the property of the husband, while by compelling her to live with him it forces her to submit to almost any amount of moral and even physical tyranny which he may choose to inflict, there is some ground for regarding every act done by her as done under coercion: but it is the great error of reformers and philanthropists in our time, to nibble at the consequences of unjust power instead of redressing the injustice itself. If women had as absolute control as men have, over their own persons and their own patrimony or acquisitions, there would be no plea for limiting their hours of labouring for themselves, in order that they might have time to labour for the husband, in what is called by the advocates of restriction, *his* home. Women employed in factories are the only women in the

labouring rank of life whose position is not that of slaves and drudges; precisely because they cannot easily be compelled to work and earn wages in factories against their will. For improving the condition of women, it should, on the contrary, be an object to give them the readiest access to independent industrial employment, instead of closing, either entirely or partially, that which is already open to them."¹⁸

A scientific examination of the facts of the case fails altogether to bear out Mill's position. The suffrage and the fullest measure of right over property and persons have failed to place women on a footing of economic equality with men. The reason for her economic disabilities are as profound as her sex differences and must be reckoned with in any realistic legislation. This is the verdict of the world's civilization.

But until recently economists were inclined to limit regulation of labor conditions and especially hours of toil to children, young persons, and women, leaving adult men "free", so it was said, to make their own contracts. But experience has shown conclusively that while adult males as a rule are in a far better position in the labor contract than the classes just mentioned, unregulated contract does not always conduce to freedom and fair opportunity—"the square deal"—but frequently means bondage and degradation. A realistic political economy must recognize the facts of the actual world, and does so.

Adverse conditions are often so strong for classes of adult males that well-considered and strongly enforced legislation is necessary to secure freedom from the bondage that would result from them if uncontrolled by social regulation; for here, as so generally, the purpose of statute law is to assist men to gain control over the

¹⁸ Mill: *Principles of Political Economy*, Book V, Ch. XI, Sec. 9, p. 579, People's Ed.

cruel and tyrannical action of uncontrolled nature and society.

We must not take the view of the state as something external, stepping in and interfering with liberty. The action that we have in mind is rather the result of the coöperative efforts of men to determine the conditions of toil and to enlarge their free sphere of economic action.

The well-being of the adult male is as precious to the State as that of women, young persons, and children; and indeed the welfare of these latter classes is normally intertwined inextricably with his strength, vigor, and prosperity. And for adult males, hours of toil on railways, the world over, must be limited in their own behalf as well as in behalf of the general traveling public in order to promote safety. This position is practically conceded in every civilized country.

It has also been necessary to regulate hours of toil of street-car employees. Before limited by law the regular working time of this class of workers in Baltimore was over seventeen hours a day and they were deprived of liberty in any possible realistic and positive sense of the term, while at the same time the women and children of their families suffered by the cruel "free play of economic forces" to use that familiar but unphilosophical and inexact phrase.

Bakers are a class of workers who, for a variety of reasons, are unable to secure hours of labor and conditions of toil, wholesome for themselves and for others. They are short-lived and unhealthy; and, if modern scientific investigations have made any one thing clear, it is that bad sanitary conditions and excessive hours of labor, bringing bad health to toilers, are a menace to the public health. We are here dealing with actual conditions,

which it is the function of Departments of Labor, as a branch of the executive department of government so to work up and present to the judiciary that judicial notice must be taken of them. Instead of confining themselves so largely to gathering miscellaneous statistics — too often, after all, almost meaningless — labor bureaus should have it as one of their main functions to investigate, exhaustively and scientifically, labor questions before the legislatures and courts; and the law should make their findings *prima facie* evidence in all cases, following in this particular the Wisconsin Railway Rate Commission Law in the case of a just and reasonable rate.

It would seem to be a weakness in the New York Bakers Case, entitled "Joseph Lochner Plaintiff in Error vs. the People of the State of New York", that the facts had not been adequately investigated by another branch of the government and that in consequence they were not presented to the Court as they should have been. The case resulted in one of the familiar "five to four" decisions. In other words, by a majority of one, the Supreme Court of the United States, on April 17, 1906, held that it was not a proper exercise of police power to restrict the hours of labor of bakers to ten a day and that consequently the New York statute was unconstitutional, because in contravention of the "liberty of the individual protected by the Fourteenth Amendment of the Federal Constitution", according to which "no State can deprive any person of life, liberty, or property without due process of law". And liberty to make contracts is held to be part of that liberty thus guaranteed as well as a property right. It is admitted that under the exercise of the police power in the interests of the general welfare, contract may be limited and regulated. The majority

opinion declares this New York statute "not within any fair meaning of the term a health law". Here the majority are clearly wrong, for they have the facts against them. But also, as Mr. Justice Holmes says in his dissenting opinion, this decision embodies an economic theory and an outlived and outworn economic theory—the economic individualism of the eighteenth century. Mr. Justice Peckham, the writer of the majority opinion, says, "Statutes of the nature of these under review, limiting the hours in which grown and intelligent men may labor to earn their living, are mere meddlesome interferences with the rights of the individual". This is totally unscientific and is a position that, because untrue, must be abandoned: as is shown by the minority—here, as so often in history, right.¹⁷

Let no one say that economics or any other branch of science may not criticise in our free land the judiciary. We know no infallible authority in the state, and to blame science for pointing out errors of courts is craven and

¹⁷ It is pointed out in the majority opinion that the New York law had no emergency clause. It may be that there is a real weakness, although even this cannot be admitted without an examination of the technical nature of the case. The words of the decision are worth quoting in this connection:

"Among the later cases where the State law has been upheld by this court is that of *Holden v. Hardy* (169 U. S. 366). A provision in the act of the legislature of Utah was there under consideration, the act limiting the employment of workmen in all underground mines or workings, to eight hours per day, 'except in cases of emergency, where life or property is in imminent danger'. It also limited the hours of labor in smelting and other institutions for the reduction or refining of ores or metals to eight hours per day, except in like cases of emergency. The act was held to be a valid exercise of the police powers of the State. . . .

"It will be observed that, even with regard to that class of labor, the Utah statute provided for cases of emergency wherein the provisions of the statute would not apply. The statute now before this court has no emergency clause in it, and, if the statute is valid, there are no circumstances and no emergencies under which the slightest violation of the provisions of the act would be innocent. There is nothing in *Holden v. Hardy* which covers the case now before us."

unmanly, contrary to the spirit of the founders of the Republic; and lacking in true respect to the Courts, because it implies that the Courts in turn are lacking in manliness and true Americanism.

But even Mr. Justice Holmes in his trenchant criticism of the majority decision, after saying truly "The Fourteenth Amendment does not enact Herbert Spencer's Social Statistics", implies in one place that while the statute may be an interference with liberty, it is an interference with liberty justified by beneficent results. The true position is that this statute represents a struggle for real, substantial liberty of which the bakers were deprived by the majority decision, retaining merely its empty shell; and indeed the learned justice himself says that he thinks the word *liberty* in the Fourteenth Amendment perverted "when it is held to prevent the natural outcome of a dominant opinion."

Science, then, can draw no arbitrary line between labor legislation for adults and labor legislation for women and children; but cases must be judged, as they arise, on their merits. But this need not preclude a painstaking and careful search for general principles, although supposed general principles have so often misled us in the past.

The International Association for Labor Legislation, of which our Association is the national section, draws no fixed line between legislation for adult males and labor legislation for women and children; and this represents the opinion of the best experts of the world—those who conservatively, and as agents of governments, are investigating labor questions.

But what has been said must not be taken to mean that economists endorse all proposals for labor legislation. Many—nay, most—such proposals they would with practical unanimity hold to be impracticable and visionary,

while others with also substantial unanimity they would endorse. Varied tests of actually proposed labor legislation economists have learned to apply almost spontaneously. Influence on production must be considered, and, while to secure a better distribution or improved conditions of toil, the interests of production may be sacrificed to a limited extent, it is held to be necessary to proceed cautiously here.

John Stuart Mill says in one place:

"Whether the aggregate produce increases absolutely or not, is a thing in which, after a certain amount has been obtained, neither the legislator nor the philanthropist need feel any strong interest: but, that it should increase relatively to the number of those who share in it, is of the utmost possible importance."¹⁸

But economists at present would scarcely be disposed to go quite so far; for great as is present production, it can easily be shown statistically that production must still be largely increased to provide an economic basis for the satisfaction of rational wants.¹⁹ The mere distribution of great fortunes, or the wider diffusion of colossal incomes, even if it can be brought about, would be far from adequate. In other words the economic problem is a far larger problem than the problem of swollen fortunes.

Efficiency must be an ever present test, but economics insists upon the long view rather than the short view. If for the sake of a strong and virile population child labor must be prohibited, we can well content ourselves

¹⁸ Mill: *Political Economy*, Book IV, Ch. VII, Sec. 1, p. 455, People's Ed.

¹⁹ It is true that Mill says in the passage quoted "that after a certain amount has been obtained" an increased production is of minor significance. The implication is, however, very clearly that we have already reached that amount or nearly reached it, and that the problem of production is, relatively speaking, of no great significance.

with the greater production in the future and increased human welfare; and this is after all the end of all economic activity. Similarly, if shortening the hours of adult males on railways and in bake-shops adds to the length of life and promotes on the one hand safety and on the other hand public health, we can bear with equanimity the sacrifices of the form of freedom for the substance of a positive constructive policy of liberty; and can easily endure the curtailment of the right (really coercion) to work an unduly long number of hours in one day on account of the assured larger number of working hours in a lifetime.

The International Association for Labor Legislation, organized at the Paris Exposition in 1900, with a permanent bureau opened in Basel, Switzerland, in 1901, has as its special function the impartial scientific examination of labor measures and investigation of actual conditions underlying labor legislation. It is semi-private, also quasi-official in character. In other words it is a voluntary organization, largely of experts and officials, but it receives subventions from most civilized governments including a small one from our own federal government. Its activities are directed by men trained in economics and they give a good idea of the relation between economic theory and labor legislation.

The objects of the International Association are stated as follows: [in]

*Article II of the Statutes of the International Association
for Labor Legislation, defining the aims
of the Association.*

1. To serve as a bond of union to those who, in the different industrial countries, believe in the necessity of protective labor legislation.

2. To organize an International Labor Office, the

mission of which will be to publish in French, German, and English a periodical collection of labor laws in all countries, or to lend its support to a publication of that kind. This collection will contain:

(a) The text or the contents of all laws, regulations and ordinances in force relating to the protection of workingmen in general and notably to the labor of children and women, to the limitation of the hours of labor of male and adult workingmen, to Sunday rest, to periodic pauses, to the dangerous trades;

(b) An historical exposition relating to these laws and regulations;

(c) The gist of reports and official documents concerning the interpretation and execution of these laws and ordinances.

3. To facilitate the study of labor legislation in different countries, and, in particular, to furnish to the members of the Association information on the laws in force and on their application in different states.

4. To promote, by the preparation of memoranda or otherwise, the study of the question how an agreement of the different labor codes, and by which methods international statistics of labor may be secured.

5. To call meetings of international congresses of labor legislation.

The objects of the American Association, of which this is the first regular annual meeting, were adopted February 16, 1906, and are as follows:

(1) To serve as the American branch of the International Association for Labor Legislation, the aims of which are stated in the appended Article of its Statutes.

(2) To promote the uniformity of labor legislation in the United States.

(3) To encourage the study of labor legislation.

It will be noticed that uniformity among nations and among the states of the United States stands out as a prominent object. As competition extends its scope and becomes intense, justice to employers requires that they

should be placed under similar conditions, so far as protective labor legislation is concerned; so that success or failure of the employing capitalist may be determined by efficiency and not by varying degrees of oppression.

Working men are mentioned as worthy of consideration as well as women and children, and special attention is directed to the hours of adult males.

Dangerous trades are emphasized as requiring special attention; and researches have been made in regard to industrial poisons.

Among the reports issued by the International Association, the two following are noteworthy:

The night work of women in industry; reports on its extension and regulation, by various contributors, with a preface by Prof. Stephen Bauer, Jena, 1903, pages xlii, 384.

Injurious trades; reports on their dangers and means of prevention, especially in the manufacture of matches and in the lead industries. Edited with an introduction by Professor Bauer, Jena, 1903, pages lx, 460.

The International Association has organized the International Labor Office in Basel, Switzerland, the president of which is L. H. Scherrer, and the general secretary is Stephen Bauer. This office conceives its function to be purely scientific, and one of its duties is the publication of the invaluable Bulletin, which gives the labor laws of the world.

The annual assemblies take action with respect to various measures, and have directed their efforts largely to gaining information to lessen industrial poisoning, and especially lead and phosphorous poisoning, to prevent night work of young persons and women, and to secure a reasonable maximum work day for adult males, especially in mines and smelters.

The International Association has been especially helpful in initiating international labor legislation; and it is doubtless due to it more than to any other one agency that the world's first international treaty, especially designed to promote the interests of labor, was signed between France and Italy, April 15, 1905; a truly epoch-making event, of which President Sherrer says in his Report to the Fourth Meeting of Delegates:

"In his exposé, given two years ago, of this Franco-Italian Labour and Social-Protection Treaty, Herr Director Fontaine said of this good work that it would make an end to the complaints of French manufacturers about unfair competition; that to it Italy owes its present system of factory inspection and the protection of Italian workmen in France, and the more just administration of the Savings Bank deposits and Insurance annuities of Italian subjects. He also remarked that this treaty owed its origin to the suggestions made, and the discussions carried on during the time of our Meeting of Delegates in 1902."

Our Association does not take any partisan attitude in the controversies between economic classes in general and between employers and employees in particular. And it is allied to no particular party. It is consulted by many governments and by adherents of the various political parties of our day; by employers as well as by advocates of labor. Its only allegiance is to the general welfare.

We may thus say that the activities of our Association are directed by humanity, the beginning and end of all economics being man, but that its humanitarian ends are directed by scientific investigations. Its recommendations are carefully considered with respect to efficiency and fairness in international competition. It believes that it is best to precede action by deliberation, exhortation by scientific study, and that progressive movements will in

the end be more rapid if in every case they are based upon a well-thought-out, scientifically established program. In this practical and scientific work it invites general participation of the men of science, of the men of labor, of the men of capital, and generally of the men of leadership in industry and in State.

THE NORMAL LABOR DAY IN COAL MINES.

THOMAS K. URDAHL.

The length of the labor day in any industry depends partly on the nature of the industry itself, but more largely upon the stage of industrial development which the industry has attained. Nearly every industry passes through the handicraft or house industry stage, in which there is no regularity of wage or employment, and where hours may be excessively long or short according to the season. It frequently happens that the hours of labor that prevail in such an industry in the handicraft stage, are maintained long after it has envolved into the factory stage. Long hours are also often found in such industries as mining or milling, because they have grown up in village or agricultural communities, where the customary labor day is from sunrise till sunset.

When the factory stage is reached labor organizations also make their appearance, and strive for higher wages and shorter hours of labor. In the great majority of cases employers of labor believe that a reduction of hours or increase in wages is detrimental to the business concerned, and resist all such efforts on the part of union or industrial laborers. Some of the coal-mines of this country are still in the handicraft stage, the pick and donkey cart being used in about the same way they were in the eighteenth century. Here a ten or twelve hour or even longer day naturally prevails. Others have reached the stage of capitalistic production where mining machinery in the form of steam and electric coal cutters, coal conveyors, huge hoists and breakers and thousands of

workmen, make coal mining a regular business, very similar in its operation to a large factory. Here we have conditions more favorable to short hours, regularity of employment, and of uniform scale of wages.

The transition from the first to the second stage is not entirely due to the introduction of machinery, but to an even greater degree to the industrial development of the country itself. In the handicraft stage the market for coal was exceedingly uncertain and variable. The domestic or winter consumption of coal was by far the most important and the demand in summer was very small. The miner and operator was very often the same person, and worked his mine with the aid of a few workmen and boys. When demand ran short he would go out and look for buyers and having secured a few orders would call his men together and start work for a week or a month. Under such conditions it is evident that both the mine worker and the mine owner would be anxious to operate long hours in order to take advantage of the busy season.¹

In the capitalistic stage the demand for coal is much more uniform all the year round. The smelters, the ocean steamers, and the factories of the country need the same amount of coal in the summer as in the winter, and the demand fluctuates only slightly from year to year, or from winter to summer. A single ocean steamer, like the *Lusitania*, is said to use as much coal per week as a city of 25000 needs for domestic use. This stable demand makes it possible to operate regularly, and to profitably make use of a shorter labor day. Where demand is very great, these mines may often run two, or even three, eight hour shifts of men, in twenty-four hours.

¹See Chart I.

This rather stable demand seems at present to be largely supplied by mines operated by corporations who are either directly or indirectly under the control of the coal-carrying railroads, and in a large percentage of them a long labor day still prevails. In the anthracite mines, which are almost entirely controlled by the railroads, there were in 1906, ninety companies operating with a nine hour day, three with a ten hour day, and a half dozen companies where the hours of labor varied from six to ten hours. In West Virginia the four railroads appear to be rapidly getting control of all the coal fields and are heavily interested in the largest coal mines. The nine and ten hour day is said to prevail in the majority of the mines.

Side by side with these corporation mines, we have numerous smaller ones, many of which are still in the handicraft stage, where output is determined by the exceptional demand of the winter months or of periods of industrial prosperity.² Here the long labor day seems often to be as natural and as necessary as long hours in the summer months in agriculture. A legal limitation upon the labor day would probably force many of these operators to shut down or sell out to the more powerful competitors, thus hastening a process now going on, which ultimately will result in consolidation of the coal industry of the country. In the larger mines on the other hand, that is, the mines which have regular transportation facilities at their disposal, the shorter work day would be possible. Here the ten and twelve hour day appears as a sort of arrested industrial development, which has been retained by artificial means, long after it should have passed away.

Lack of organization on the part of the mine workers

² See part above the broken line B C in Chart I.

is the chief cause. This is often the result of conscious or unconscious efforts on the part of operators, to introduce alien laborers over whom the labor organizer has little or no influence.

Just as the immigrant is the feeder of the sweatshop and one of the chief causes of the long hours prevailing there, so the foreigner is the chief factor in the retention of the long hours in the coal industry. Where native American labor is employed we find the long labor day only in communities, like the Southern states, where coal mining is a new industry. This will perhaps explain the hostility of the union men to the foreigners, or "dagos" as they are termed in mining communities, and furthermore shows the intimate relation between the immigration problem and the length of the labor day.

GEOGRAPHICAL DISTRIBUTION OF THE EIGHT HOUR DAY.

We have, therefore, a very complex problem to consider. Geographically the so-called eight hour day is found in the central states and the Rocky Mountain region, and the long hours are found in the East and South. In the central states, *i. e.* Ohio, Indiana, Illinois, southwestern Pennsylvania, Kansas, Arkansas, Oklahoma, Texas, and parts of Iowa and Kentucky the short labor day has been obtained through the efforts of the miners' unions by making it a part of their joint agreements with the operators. In Pennsylvania and West Virginia and in parts of Maryland, Virginia, Alabama, Tennessee, and Georgia, the eight, ten, and eleven hour days prevail side by side, with a preponderance in favor of the ten and eleven hours.³ The Rocky Mountain states that have secured an eight hour day by legislation are Utah, Wyoming, Montana, Nevada, Colorado, and the

³ See Charts IV, V, and VI.

Central state, Missouri. The Colorado law was declared unconstitutional by the state supreme court, but in the other states the laws now seem to be in force.

CONSTITUTIONALITY OF EIGHT HOUR MINING LAWS.

The chief question concerning the constitutionality of such laws, is whether or not they violate the Fourteenth Amendment by abridging the privileges and immunities of citizens of the United States. In the famous Utah case of *Holden v. Hardy*,⁴ the United States Supreme Court decided this question with all the justices except Brewer and Peckham concurring. In this case the court in conclusion lays down the principle, that the class of employees does not stand on an equal footing with the employers. The employer makes the rules and the employees are practically constrained to obey them. Hence self interest is often an unsafe guide and the legislature may properly interpose its authority. It is not so much the right of contract of the employer that is interfered with, as that of the laborer, whose right to labor as long as he pleases is violated. The fact that both parties are of full age and competent to contract does not necessarily deprive the state of its right to interfere where the parties do not stand on an equality and public health demands that one party to the contract shall be protected against himself. The state is no greater than the sum of its parts, and when the individual health is sacrificed the state must suffer. Some years later this decision had been handed down, a similar law in New York restricting the hours of bakers to sixty per week came before the Supreme Court for adjudication. The opinion of the Court, this time, delivered by Justice Peckham, ran in part as follows:⁵

⁴ 169 U. S. 366.

⁵ *Lochner v. New York*, 25 Sup. Court Rep. 539.

"There is no reasonable ground for interfering with the liberty of person or the right of free contract by determining the hours of labor in the occupation of a baker. There is no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or that they are unable to assert their rights and care for themselves. . . . There is in our judgment no reasonable foundation for holding it to be necessary or appropriate as a health law to safeguard public health or the health of the individuals who are following the trade of a baker. . . . Under such circumstances the freedom of the master and employee to contract with each other in relation to their employment and in defining the same cannot be prohibited or interfered with by law without violating the federal constitution."

It is evident from these cases that the court holds, that coal mining is a dangerous, unhealthy occupation, and that it is a part of the *police power* of a state to pass an eight hour statute for protection of the health of the miners. The result of the Utah decision is that the miners have an eight hour "bank to bank" day. This means that they are hoisted and lowered on the time of their employer instead of on their own time, and makes the effective work day about seven and one half hours. This decision of the United States Supreme Court is of the very greatest importance for future legislation in the interest of coal miners and makes it possible, wherever the state constitution does not forbid, to enact laws on this subject.

THE MINERS' EIGHT HOUR DAY IN FOREIGN COUNTRIES.

Eight hour legislation has not only been tried by the so-called sagebush legislators of the Rockies, but has been put into operation by three of the coal mining states of Europe. Austria was, in 1884, the first European

nation to limit by law the number of working hours in coal mines to ten. On January 27, 1901, the law was modified so as to reduce the labor day of all underground workers to nine hours from the time of entry to the completion of the outward journey, including the lunch period. This law went into effect in July, 1902, and reduced the labor day of seventy per cent. of all the coal miners of Austria to an actual working day of about eight hours.

France has also enacted legislation on this subject. To a certain extent this legislation is said to be due to the great strike following the frightful disaster at Courrières. The law, which was passed January 29, 1905, and became effective January 5, 1906, provides for a legal day of nine hours, calculated from the descent of the last miner into the shaft, to the arrival at the bank of the first worker at the end of the shift. This limit is to prevail during the two years, January 1906 to 1908. From 1908 to 1910 the working day may not exceed eight and one-half hours, and after January 5, 1910, the day is limited to eight hours. The law therefore provides for the introduction of an eight-hour day by two half hour stages extending through four years.

The French law, in contrast with the Austrian, does not apply to all underground workers, but only to hewers or pickmen who work in "abbatage", *i. e.* at the coal face. It seems highly probable, however, that it will be extended to all underground workers in the near future.

The only other European country which has at present in operation a legal limitation of the miners' labor day is Holland. Here also the law is of recent origin, and only came into operation on November 1, 1906. Up to January 1, 1908, the labor day in the Dutch coal mines shall not exceed nine hours, and after 1908, no man shall be

allowed to stay underground longer than eight and one-half hours a day, calculated from the beginning of the descent into the shaft to the beginning of the ascent at the end of the shift.

Aside from these cases and the experiments in Australasia, but a very little progress has been made toward the eight hour day by means of legislation. Numerous efforts have been made to secure such laws in England, Germany, and America. In England such men as Chamberlain, Balfour, and Sir Charles Dilke have advocated an eight hour day for coal miners, and no less than fourteen such bills have been introduced in Parliament during the past fifteen years.

Much progress has also been made as a result of the efforts of the laborers themselves. Each of the great miners' strikes in England, Germany, and America have thus far been mile stones in the eight-hour movement.

In the great German coal strike of 1889 the main demand of the miners was for "the eight-hour shift which we inherited from our ancestors". The outcome was an eight-and-one-half-hour day for about four-fifths of the coal miners of Germany. The operators granted a nominal eight-hour day, which was not to include the time taken in going from the bank to the place of work and return. In the strike of 1905, in which about 200,000 coal miners took part, the strikers demanded a system somewhat like the one introduced in France. They demanded a nine-hour day, including the time of entry and exit, for the year 1905, eight and one-half hours for the year 1906, and an eight-hour day after 1906.

The demands of the miners were not granted, and as a result bitter complaints are heard at present in all the mining communities of Germany, because the govern-

ment refuses to legislate on the alleged abuses in the coal mines. In Germany, as in America, legislation of this sort lies within the province of the individual state, and, with the exception of Prussia, they have thus far done nothing. In Prussia the working hours at the collieries are fixed by the labor regulations issued by the mine owners and sanctioned by the superior mining authority (Oberbergamt). This authority is empowered by the Diet to fix the length of the labor day in those cases where the health of the miners is endangered by the long hours. Thus far little has been done, except to provide that where the temperature in mines exceeds 28 degrees C. (=82.4 degrees F.), that the labor day shall not exceed six hours.

Even Belgium, where women and children are still found working long hours in the coal mines, has by royal decree appointed a commission to inquire into the effect of the limitation of hours in the mining industry. Much progress has therefore been made along the line of restricting the hours in the collieries, both by means of voluntary agreements between operators and miners and by legislation, and it seems highly probable that other states will soon adopt similar measures. Thus far such laws have been adopted only in the smaller coal-producing states of Europe and America. France produced about thirty-five and a half million tons in 1905, Austria thirty-five million, and Holland less than a million tons, whereas in America the output of all the Rocky Mountain states, that have enacted eight-hour laws, is very small compared with the enormous tonnage of Pennsylvania and West Virginia, which, according to the returns for 1906, are the two largest coal states of America.

America's real industrial rivals, Germany and England, whose output in 1905 was two hundred and thirty-six

and one hundred and seventy-four million tons respectively, have thus far failed to pass such laws. The advisability of such legislation for the largest coal-producing states, has therefore not been conclusively demonstrated. Before such measures can be advocated, it is necessary to determine what their effect upon the laborers will be, and whether the economic effects on the industry and commerce of the country make this kind of legislation desirable.

THE PRESENT LABOR DAY IN COAL MINES.

First, we must ascertain what the present hours of labor are, if we wish to judge of the effect of an eight-hour law upon the output and the conditions of the laborer. In a factory or other industrial plant it is comparatively easy to get at the hours of labor at any given time. But in coal mining we have often a variable work day according to the conditions in each mine. In some localities the mine is normally in operation ten hours each day, but most of the miners rarely work that length of time, because they are paid by the ton and not by the day, and may stop work whenever they please.

In many communities there are certain short days on which the miners stop work at noon. Where the native American predominates, the mines usually close at noon on Saturdays, because the miners wish to attend football, baseball or other games on that day. Then there are days on which no work is done, which, in addition to Sundays, are considered either legal or regular holidays. Where the foreign element is found, there are from twelve to fourteen Church holy days on which the mines have to close down. In England, where the average normal labor day is nine hours and three minutes, the loss of time due to these causes amounts to four hours

and twenty-five minutes per week, leaving an effective average of only forty-nine hours and fifty-three minutes per person for each normal week.

There is also much time lost in all collieries as a result of stoppage of the mines due to lack of orders, shortage of cars, strikes, lockouts, and accidents. The English labor and trade conditions are much more stable than the American, and yet the average loss of time due to these causes for the ten years ending 1906, was three hours and thirty-seven minutes per week, in normal weeks. This reduces the weekly average to forty-six hours and sixteen minutes. All this loss may be said to be due to causes over which the miner has little or no control, and may therefore be considered unavoidable. In addition to all this, there is everywhere a good deal of voluntary absenteeism not due to illness or any of the above causes. The miner simply stays away from work for a day or more at a time, and thus sometimes loses as much as half the available working time of the week. This sort of absenteeism is not confined to any one locality or to any particular season of the year, but occurs everywhere, in periods of abundant demand and full work, as well as in times of depression and short work. In England, again, the average amount of available work voluntarily withheld by the miners themselves for the period of 1899 to 1905 amounted to three hours and three minutes per week, leaving a balance of only forty-three hours and thirteen minutes, which may be considered the actual average number of hours for all classes in normal weeks.

It appears, therefore, that for the entire United Kingdom, out of the total possible fifty-four hours and eighteen minutes which the English coal miner may work in a normal week, that he actually does put in forty-three hours and thirteen minutes, or seven and one-fourth

hours per day. These seven and one-fourth hours not only include the time which he actually works at the coal face, but the time spent in traveling from the mouth of the shaft to the place where he works, and the time taken for lunch. The English committee therefore found that on an average the English miner actually put in not much more than six hours of actual work on a normal workday.

While no accurate data are obtainable on which to base a similar computation for the United States, it seems highly probable that the average number of hours would, for the whole country, be even less than in England.

It is usually assumed that a shorter work day will produce greater regularity of employment and that much of this loss of time due to voluntary absenteeism and preventable causes would disappear. Thus far the results in America do not confirm this belief. In Ohio, where the eight-hour day prevails, the average number of days worked in the year 1905 were 173, whereas in West Virginia, with the ten-hour day, the average number of days were 237, and in Virginia 237, and in other states from 150 to 250. In no case, even where the eight-hour day is in force, do the miners work the entire 300 days in the year.

It is perhaps true that a shorter and more rigid labor day will eliminate some of the absenteeism and induce the operators to have the breaker and other machinery running more regularly. But, considering the character of the labor and the nature of the industry, this would by no means make up for the loss of time due to the reduction. It has been estimated that in the United Kingdom the total labor hours per day, would be reduced from 6,197,359 to 5,474,328.⁵ It is almost inconceivable that the increased regularity and efficiency of the miners

⁵ See Chart II

should counterbalance this enormous loss of time. In some cases the laborers are not working at their maximum efficiency and in others they have already reached their optimum, and but little increase is possible. The increased efficiency due to shortened hours is more manifest where the reduction is from twelve to nine than where the reduction is from nine to eight hours.

EFFECT ON MECHANICAL EQUIPMENT.

The enlargement of the production per man per hour is much more likely to result from the improvement in the mechanical equipment of the mine. Improved and larger breakers, hoists, coal conveyers, an increase in the number of shafts, and better methods for handling the coal after it leaves the mine, promise much larger increase in output of coal in the future. This movement will probably be hastened by an eight-hour day—but it is a movement which is going on about as rapidly in the mines where the ten-hour day prevails as in the eight-hour mines, and it cannot therefore be legitimately called a result of an eight-hour law.

ECONOMIC EFFECTS OF THE EIGHT-HOUR DAY.

The most important economic question involved is whether or not such a law will result in a diminution in the output of coal. This question is answered affirmatively by nearly all mine owners and by those who oppose such legislation. Others, among whom are many leading economists, labor union leaders and investigators, maintain just as vigorously that the reduction of hours to eight, will not in the long run decrease the output per day per man. Large amounts of statistics are cited on both sides, but a careful study reveals the fact that but few accurate data are available on this specific problem.

If a shortening of the labor day causes a great reduction in the output of coal it is a most serious matter, and is of far greater importance to the country than a reduction of output in any other industry, since nearly all industries depend to a greater or less degree upon a cheap and stable supply of this commodity. The industrial prosperity of a country is no longer measured by the per capita consumption of meat and bread. Says Jevons in his treatise on the Coal Question: "Our subsistence no longer depends on our production of corn. The momentous repeal of the corn laws throws us from corn to coal. It marks the epoch when coal is finally recognized as the staple produce of the country." This epoch, foreseen by Jevons for England at the time of the corn laws, has also arrived in America, and if she is to hold her own in the competition for world markets, she must see to it that her factories, smelters, and steamships are supplied with as cheap a fuel as her rivals England and Germany.

The most thorough investigation of this question thus far attempted, has been carried on by the recent Miners' Eight-Hour Day Committee in England. In a hearing before that committee, Mr. Radcliffe Ellis, the chief representative of the mine-owners' association, attempted to show that a reduction of the hours of labor in the United Kingdom from the present average of nine hours and three minutes to eight hours would mean a reduction of 31,900,000 tons per annum, or about thirteen and a half per cent. of the total output.⁶ This, he maintained, would quickly produce a crisis and ultimately the downfall of England as the industrial leader of the world.

As far as actual experiments are concerned, Austria probably furnishes the best example. After a trial of

⁶ See Chart II

four years, the statistics compiled by the Austrian Bureau of Agriculture, indicate that one hundred and seventy-five, out of the total of three hundred and two coal mines, maintained their output, seventy-eight produced less than they had before, and forty-nine fluctuated from year to year.

The Royal Mining Office of Breslau, Germany, states that the reduction of the labor day for the miners in Lower Silesia resulted in from six to twenty per cent. decrease in the output, and in only three mines was it increased. On the other hand, the secretary of the Yorkshire Coal Masters' Association states that the eight-hour day had increased the output in the Yorkshire collieries, whereas in Cumberland a three-fourths hour reduction resulted in an eleven per cent. diminution in the coal product.

The evidence therefore shows what we would naturally expect it to show, that the output is increased under certain conditions and decreased under others. It depends on the character of the men, the character of the coal bed, and the character of the management, whether one result or the other follows.

Generalizations are exceedingly dangerous and they often mean nothing, but if the meager data obtainable in the United States may be made the basis of a general conclusion, it may be formulated as follows: A reduction of the labor day in Pennsylvania and West Virginia will not result in an enormous curtailment of production, as is maintained by the operators, nor will it result in increase of output, as contended by some writers; but it will result, for a time at least, in a reduction of the quantity of coal put upon the market, and that in turn, unless a crisis sets in, will mean higher prices both to the manufacturer and the domestic consumer.

In the long run the mining industry will easily make up for the curtailment of production brought about by a short labor day. As an illustration of the possible expansion of coal production under an eight-hour day, it is only necessary to observe the extraordinary increase in the output of the mines of Illinois, just before the two-year agreement between the miners and the operators expired, on April 19, 1906. (See Chart III.) If at that time, in anticipation of a strike, the output could be increased over a million tons above the highest point reached by production during the busiest season of the year, it is reasonable to suppose that in the country as a whole, a small increase in price would in the long run bring about a more than equivalent increase in production.

In attempting to pass upon the question whether a legal, rigid eight-hour day should be introduced in spite of the probable reduction of output, it is necessary to consider both its effects upon the miners, whose motto is, "Whether you work by the piece or the day, reducing the hours increases the pay", and also the effect upon the industries dependent upon the coal supply. So far as the miners are concerned, there seems to be almost unanimity of opinion that a regular eight-hour day would be advantageous. There is nothing, says Charles Booth, that so tends to demoralize the character of a body of workmen as irregularity of employment.

The educational movement, the Americanization of the aliens, the development of thrift and manhood, are all fostered by short regular employment. It will give the miner what Ernest Abbé said every man was entitled to, namely: "Eight hours for work, eight hours for sleep, and eight hours to be a man." But the laborers are not the only ones to be considered. The great outside public has become a third partner in the coal industry. Its in-

terests must also be considered. The public is vitally interested in the elimination of everything that produces disturbances in the regular supply of coal. The Bureau of Labor reports that in the twenty years, 1881-1900, 13,116, or eleven and two tenths per cent, of all the strikes in the United States were for a shorter labor day, and in 37,113, or thirty-one and six-tenths per cent. of all the strikes, a shorter labor day was one of the causes. During the last six years there has been scarcely a single great strike, in which this question has not been important. If by legislation it is possible to eliminate this important cause of labor disputes in the coal industry it might be desirable, even if the output were for a time reduced.

In Illinois and Ohio, two of the greatest coal-producing states, in which the miners themselves have secured an eight-hour day, the average number of days worked by the coal miners in the year 1905 was only one hundred and seventy-three. In Illinois the average for 1906 was only one hundred* and seventy-two days, and for the fourteen years ending 1906 the average was one hundred and eighty-four days. In Pennsylvania, West Virginia, and Virginia, states in which the longer days prevail, where the unions have not been strong enough to win by force a shorter day, the average number of days worked each year is very much greater. In West Virginia the average for 1906 was two hundred and thirty-seven days, for 1905 two hundred and thirteen, and for the ten years ending 1906 the average was two hundred and twenty-four days.

The other states show similar returns. These figures help us to appreciate the economic waste involved in letting the contending factions fight it out. If, in the state of Illinois, the coal miners have been forced to be

idle from four to six months each year during the past fourteen years in a period of unprecedented industrial prosperity, it would seem to indicate that the systems of fighting out industrial disputes is disastrous to the worker at least. An average of from four to six months' enforced idleness on the part of every coal miner in the state tells its own story of misery and loss.

THE EIGHT-HOUR DAY IN ITS RELATION TO THE HEALTH
OF THE MINERS.

The ruling of the Supreme Court in the Utah case lays particular stress on the necessity of such legislation in order to protect the health of the miners. The question naturally arises whether a shorter labor day does materially benefit the health of the miners and whether the miner's health is such that he needs protection. Very few reliable data can be found, but if we can accept the results of the English statistics relating to the health of coal miners, we find that mining is there apparently a dangerous but not unhealthy profession.

Taking as a standard the number of males between the ages of twenty-five and sixty-five years, among whom one thousand deaths occurred in 1900-2, the English Superintendent of Statistics found nine hundred and twenty-five deaths among occupied males, and among the same number of coal miners actually following their employments, only eight hundred and forty-six deaths, whereas the number of deaths among an equal number of tin miners is far in excess of the average for the occupied males in the country.

There are said to be no special diseases that particularly effect coal miners. In recent years; however, the coal miners of Belgium, Germany, and Australia have suffered in large numbers from an intestinal disease caused

by a parasite (*Anchylostomiasis*). When once introduced it spread with great rapidity, largely as a result of lack of cleanliness on the part of the miners and lack of sanitary appliances in the mines.

The disease is preventable in its nature, and has not as yet spread to England or America. While the occupation of the coal miner does not appear to be especially unhealthy either in England or America, it does not follow that shorter hours would not be beneficial to the health of the miners. According to the scanty information obtainable from England, those counties in which the mortality was highest were also the counties having the longest hours for coal miners, whereas the lowest mortality rate is found in those mining districts in which the labor day is shorter than the average. There is not enough evidence to warrant any generalization on the subject, since none of the state mining inspectors or bureaus of labor have given the subject much attention.

ACCIDENTS IN COAL MINES AND THE LABOR DAY.

On the other hand, considerable attention has recently been given to the causes and prevention of accidents in coal mines. The terrible catastrophes both in the United States and in foreign countries have aroused public sentiment everywhere, and in response to this demand, several states are now making statistics of accidents, and investigating their causes and methods of prevention. The advocates of the eight-hour day in coal mines maintain that accidents are often due to the exhaustion and carelessness brought about by long hours. Furthermore, it is claimed that a shorter labor day would promote education, which in turn would tend to lessen the possibility of accidents, since many of them are due to ignorance, rather than to carelessness.

The opponents of such a measure claim, on the other hand, that an eight-hour day will cause excessive haste and carelessness, since nearly all miners are paid by the ton instead of by the day, and in order to do the same amount of work in eight hours as they now do in ten, miners will give less attention to the timbering, the roof, etc., thus increasing the probability of accident. If a shorter labor day would really result in greatly increased speed, this conclusion would probably be sound, but in many cases it is asserted that the miner will not work any faster, but will simply utilize the time which is now wasted and thus maintain the output per day. If accidents were particularly numerous during the last hours of the day, as we would expect in case they are due to fatigue and carelessness, a shorter day would tend to diminish their number, but statistics seem to show that the majority of all mine accidents occur in the earlier hours rather than in the latter part of the day. They are more frequent where foreigners are employed than among native-born miners, and, according to the data gathered by the inspectors of West Virginia, vary inversely with the length of time the workmen have been engaged in mining.

The long labor day does not, therefore, appear to be a direct cause of accident. There may be a slight indirect relation, but this also is very uncertain. The long labor day makes it more profitable to employ cheap foreign labor than under an eight hour day. These foreigners, ignorant of the language of the bosses and the managers, can with difficulty be taught the most elemental principles of safe mining. In some of the German mines this danger is deemed so great, that foreigners who do not understand the German language are refused permission to work underground. A compulsory eight hour day

would make it unprofitable to employ the cheapest grade of labor now utilized, and native-born miners would, it is believed, take the place of the immigrants.

THE MEANING OF AN EIGHT HOUR DAY.

An eight hour day in coal mining has no definitely established meaning such as it has in the factory. The men must descend the shaft a few at a time and, where the number of workmen is large, this operation takes from fifteen minutes to an hour. In England the average is half an hour, whereas in America the average is perhaps lower because many of the mines are very near the surface. The eight-hour day as interpreted by the English Committee means a 'bank to bank' day, which means a period of eight hours' duration under ground for each individual miner. It may be calculated from the time the first cage in the morning leaves the mouth of the mine to the time when the first cage in the evening carrying miners reaches the surface, or it may be calculated from the time the last cage leaves the mouth of the shaft to the last cage in the evening. Another way to measure the eight hour day is to calculate it from the descent of the first man to the ascent of the last man, thus confining all the operations of the colliery to certain specified hours. This method would make the average time of all miners underground, from eight and a quarter to eight and a half hours.

Another method of interpreting the term "eight hour day" is, that it means eight hours for raising coal and that the men shall be raised or lowered before and after this period of time. This is the method used in many of the mines in Germany. According to the regulations of the Royal Coal Mines, it is counted "from the termination of the lowering of the men in the cages to the beginning

of the raising of the men". In the Central States where the so-called eight hour day now exists it is in reality an eight and one-half hour labor day. The miner, in most of the bituminous mines, has to be in his working place and not, as in Germany, at the shaft of the mine at both the beginning and the end of the eight hours, which means that he has to be hoisted and lowered on his own time and furthermore has to travel to and from the place of work from the base of the shaft, which in some mines is a distance of nearly four miles. As the shaft is deepened and as the workings progress, the miners' labor day will thus gradually become longer, until another limit is established, usually as a result of a strike or a labor struggle. This condition prevails more or less generally in all the coal mining states east of the Mississippi, and that means that the labor day agreed upon in 1897 will in time grow longer and longer, and thus become a cause of future labor disputes.

Legislation is therefore not only needed in Pennsylvania, West Virginia, and the South, where the long day prevails, but in the very states in which the eight hour day is said to prevail, in order to establish a uniform and unchangeable normal bank to bank day, so as to fix by law the unit of measurement of labor just as at present weights and measures are established. This being fixed there would still be ample scope for collective bargaining between the miners and the operators concerning the wages or rate per ton. Such labor legislation could be introduced most advantageously in a time of industrial depression when the demand for coal is declining. At such times there will not be so much opposition to it on the part of the operators, nor will it result in a great increase in the price of coal. In many states the machinery for carrying out such a law is already in existence, for

the duties of the present mining inspectors could easily be enlarged.

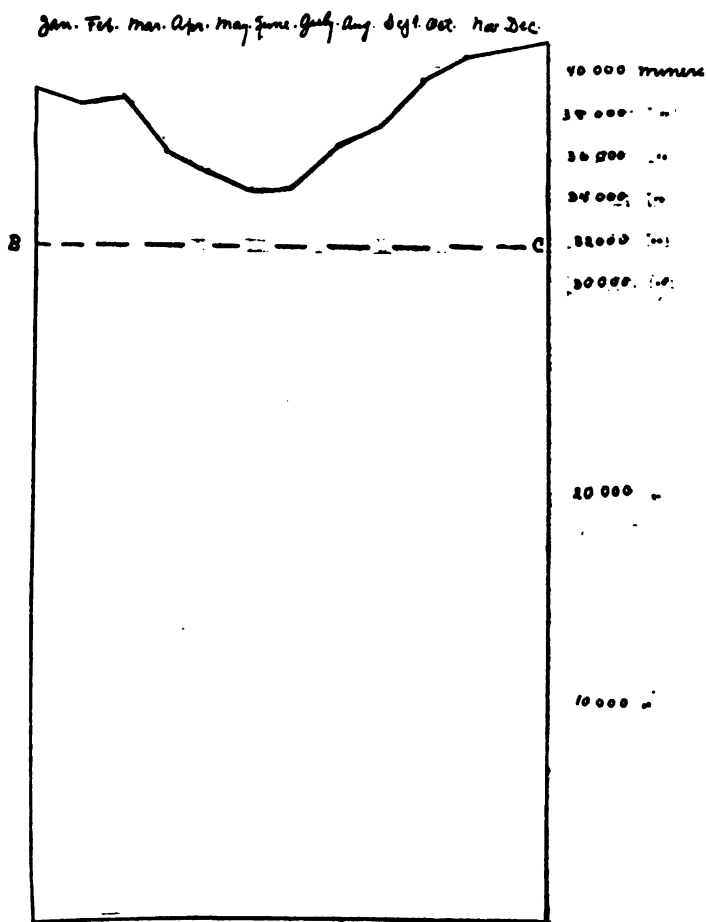
A RIGID OR ELASTIC EIGHT HOUR DAY.

It is important to consider whether such a law should be absolutely rigid and uniform or whether temporary or permanent exceptions should be allowed, by giving some official in authority, power to issue permits to operate longer than eight hours per day. Permanent exemptions might be granted in those cases where mines would have to be shut down, were the law rigidly enforced. Temporary exemptions might be granted for a month or two in times of emergency when the demand for coal is excessively great and the supply inadequate. In France where this system has been tried the temporary exemptions have aroused bitter criticisms, whereas no complaints have been heard with regard to the permits for the poorer mines. It is a question whether such an elastic system could be carried out in the United States. Where a suitable scheme of enforcement could be devised, it would seem exceedingly desirable, if exemptions could be granted to those mines whose profits are so small, that they could not continue in operation under an eight hour system. This, however, is a question of administration and expediency rather than one of policy. In any case, what is needed first of all, is investigation. To this end there should be more coöperation between the state and national investigating agencies. To obtain valuable results some uniformity of terms and their meanings should be agreed upon, and special attention given to the actual conditions in the coal mines of each state. Such investigation should precede legislation so that the law-makers may know exactly what changes such a law will bring about, how many laborers and how many mines will be

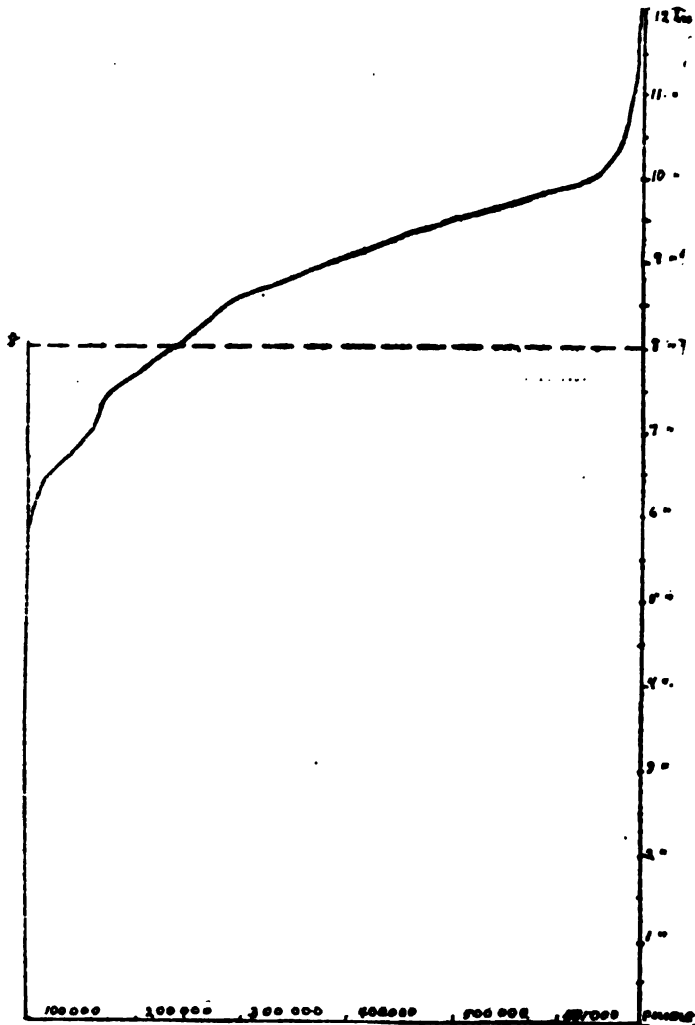
affected, and what the probable diminution of output will be.

The shorter labor day is bound to come. If it is not introduced by legislation, it will come as a result of industrial war and at an enormous cost to the country at large. The economists and writers on this subject seem to be divided into two great camps. One group, like Professor Ashley, the representative of industrial imperialism, believes that brute force will in the end have to settle all these questions, that it is best to let the laborers and the employers fight it out if such disputes are to be permanently settled. They believe that legislation usually interferes with the natural trend of events without really accomplishing anything. Says Professor Ashley in his book on the Adjustment of Wages, "For it has to be clearly understood that the ultimate arbiter in the industrial world as in the world of international politics is *force*. The determining decisions can commonly only be arrived at by a trial of strength."

The other group seems to believe that we have reached a stage, where the state can put an end to some of these industrial combats, by making laws which will diminish the uncertainty concerning mutual rights. Legislation cannot of course do everything. Legislation can only be successful where it is backed by a party or public sentiment strong enough to enforce the law. Where there are no miners' unions, and where the foreign elements predominate in the coal mines, it is doubtful whether an eight hour law would be effective. But wherever the miners have aggressive organizations, they could secure the enforcement of an eight-hour law, even though they are not able to win an eight-hour day by force.

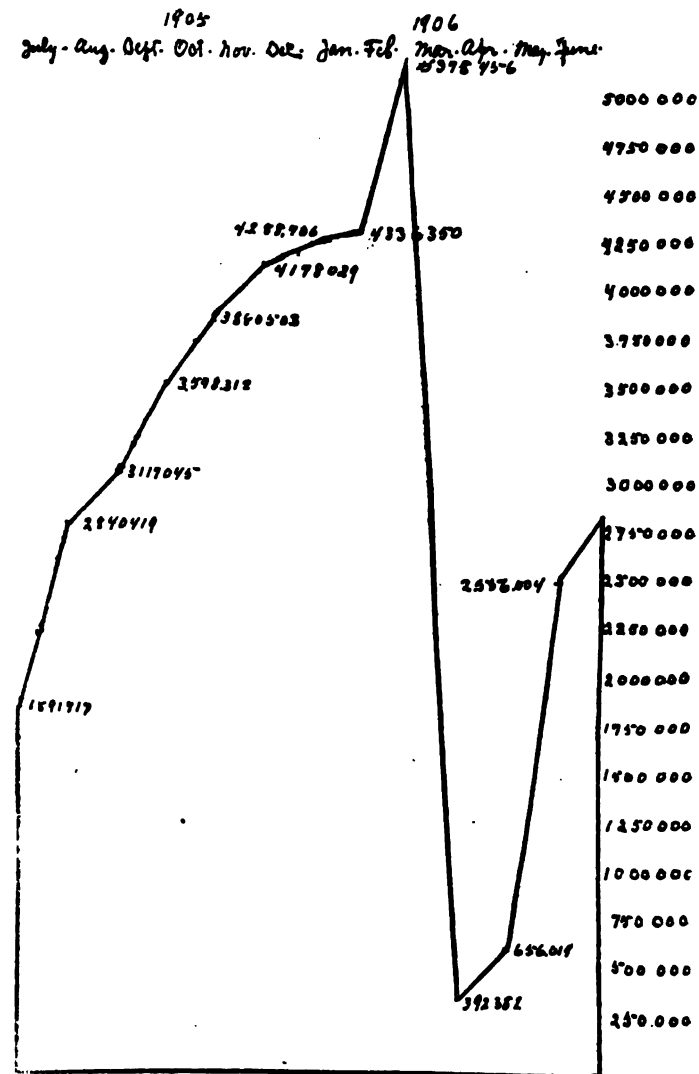


I. Number of miners employed each month in Ohio in 1905.
 "The part above the broken line B-C indicates the seasonal character of coal-mining in the handicraft stage."

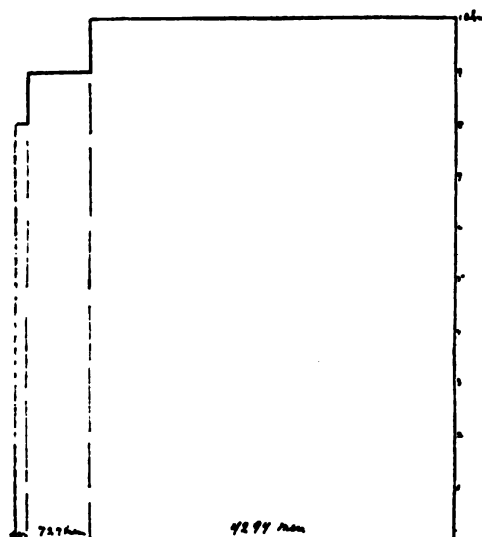


II. The labor day in the coal mines of England.

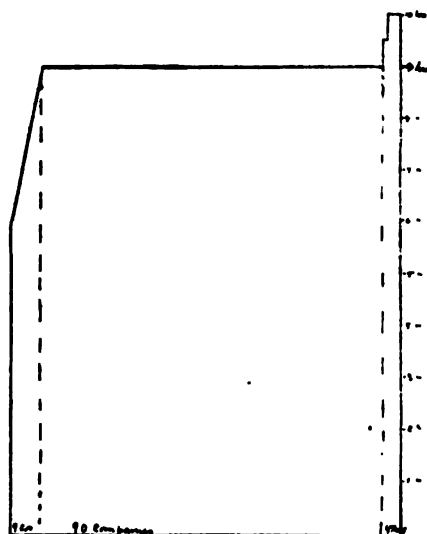
The part above the broken line shows the time which would be lost by the introduction of an eight hour day. From Report of Miners' Eight Hour Day Commission.



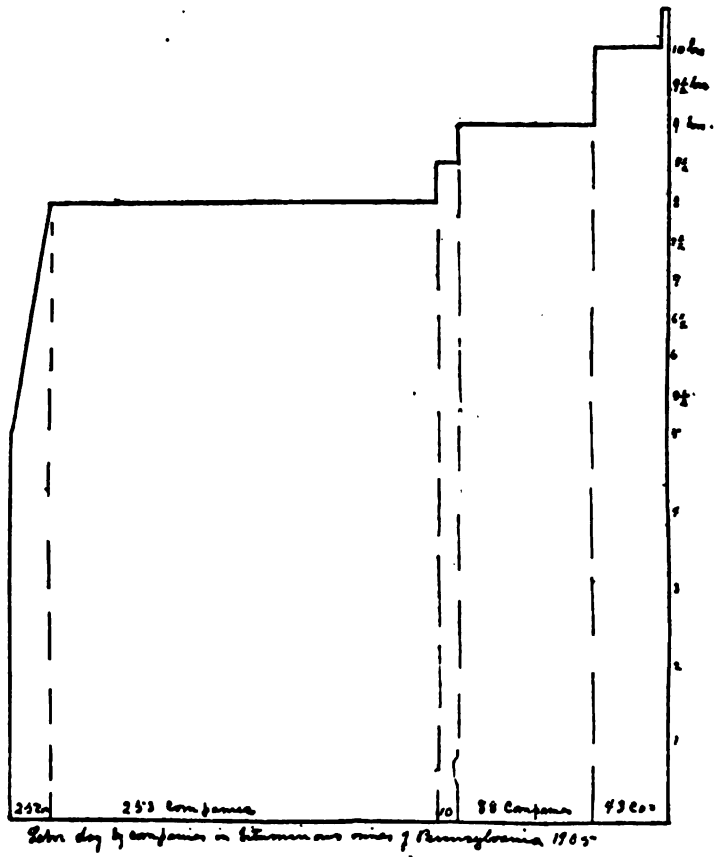
Output of coal in Illinois for each month July 1905 to July 1906



IV. Labor day in the coal mines of Virginia, 1906



V. Anthracite coal companies in Pennsylvania in 1905 with labor day.



WORKINGMAN'S INSURANCE IN ILLINOIS.

CHARLES R. HENDERSON.

I.

ORIGIN OF THE MOVEMENT.

When President Roosevelt was Governor of New York in 1899, an effort was made in the New York legislature to introduce a compensation law, such as had been passed in England in 1897. Governor Roosevelt was eager to have it passed, but the representatives of the trade unions were instructed to work for a more stringent liability law, and the movement was retarded, temporarily defeated.

In the year 1902, Senator David J. Lewis, a lawyer, introduced into the legislature of Maryland a bill intended to encourage or virtually compel employers, in certain dangerous occupations, to provide insurance for their employees. There was in the law a drastic provision extending the scope of liability, and then the employer was permitted to avoid this liability by paying given sums to the State Insurance Commissioner for the creation of a fund, out of which a death indemnity of a thousand dollars should be paid. The law was passed, and a number of death benefits were paid out by the Insurance Commissioner. It was declared unconstitutional by an inferior court, on the ground that the law gave judicial powers to an administrative officer. No case has been carried up to the Court of Appeals, and the final test has not been applied. The author of the bill thinks that the indifference of employers to the law

was due to the fact that the number of cases attributable to negligence is so small that freedom from liability, under that clause, is not sufficient motive to induce them to go to the trouble to insure their employees.¹

This experiment seems to indicate that we cannot make progress by indirection. The legal principle, underlying the present liability law, is that of damage due by the employer to an employee injured in consequence of culpable negligence; while insurance is based on a broad social policy, in which personal culpability is hardly considered. Oil and water do not mix.

On June 5, 1903, the legislature of Massachusetts instructed the governor to appoint a committee to report on laws on the relations between employers and employees. On Jan. 13, 1904, they reported a bill, practically the same as the British Compensation Act of 1897, amended 1900. This bill was discussed and defeated, on the ground that such a law would place a burden on the manufacturers of Massachusetts, which would not be borne by these in states not having such a law, and would cripple them in competition. Legal criticisms have exposed several other objections.²

The German exhibits of the German social policy at the Expositions of 1893, in Chicago, and of 1904, in St. Louis, contributed greatly to public interest and intelligence. The exhibits of the United States showed in pitiful contrast, and awakened shame and resolve in many minds.

II.

THE ACTS OF THE LEGISLATURE OF ILLINOIS.

The immediate occasion for the introduction of the subject in the legislature of Illinois was the defeat of the

¹ See *American Journal of Sociology*, Sept., 1907, p. 196.

² See Article of Professor E. Freund *Green Bag*, 1907.

effort of trade unions to make the liability law more drastic by statute, since Illinois has the Old English Common law to regulate employers' liability for negligence. This defeat occurred near the end of the session, but the friends of the movement succeeded in having passed (May 2, 1905, in the House, May 4, in the Senate), a joint resolution which reads as follows:

"Whereas, The limited time at the disposal of the present session of the General Assembly is insufficient to take up, much less carefully and fully consider, the important subject of industrial insurance including pensions for aged workers, protective measures in the interest of the workingmen, which in other countries have proved of great value and benefit; and,

Whereas, Even in the most favored countries the margin between work and want is an exceedingly narrow one; besides there can be no apprehensions more keen or pitiless than the constant clinging dread shared equally by all wealth producers that misfortune in the form of sickness, the liability to become incapacitated through accident or by time's inevitable advance accompanied by waning strength, there will be lacking the means necessary for ordinary maintenance. This most melancholy fact, of which all are conscious, poisons the present and fills the future with fears. The so-called civilized industrialism of our day can be subject to no stronger criticism than the charge, fortified by universal experience, that the men and women whose productive energy have contributed so much to our wealth, progress and development, leading simple, unexpensive lives, become in their declining years powerless, principally because they are penniless; and,

Whereas, It ought to be the duty of the law-making power of the state to prevent, so far as legislative aid and encouragement can modify, this deplorable state of affairs; therefore, be it

RESOLVED, By the House of Representatives, the Senate concurring herein, That the Governor is hereby authorized and requested to appoint a commission consisting

of five representative men who shall serve without remuneration and whose duties shall be to thoroughly investigate and report to the Governor the draft of a bill providing a plan for industrial insurance and workingmen's old age pension for consideration and action by the members of the Forty-fifth General Assembly."

In accordance with this instruction, Governor Deneen appointed a commission: Charles H. Hulburt, a business manager, president; Adolph E. Adelloff, a representative of trade unions; David Kinley, University of Illinois; Harrison F. Jones, a lawyer and administrator of a railroad insurance scheme; and Charles R. Henderson, secretary. The legal advisers of the commission were Mr. C. H. Hamill and Professor E. Freund, whose aid was very much appreciated.

III.

REPORT OF THE COMMISSION.

By quoting a few paragraphs from the report of this commission we can best review the argument presented:

"The duty of the commission is clearly and comprehensively stated in the resolution of the General Assembly and the necessity for its work is indicated in the preamble. Under modern conditions of industry, as compared with those in the days of our ancestors, the causes of injury and disease are multiplied by the use of rapid, steam-driven machinery, by congestion in crowded shops of towns and cities, and by the increased strain of life; at the same time the operatives have no longer ownership and control of the instruments of production, no voice in the management of the process, no vote in shaping the physical conditions under which they must toil, and no share in the profits of the business. The vast majority of industrial laborers live upon wages and are under the direction of managers on whom they are economically dependent.

"Under these conditions some measure of legal con-

trol, independent of both employers and employees, is recognized to be necessary in all civilized nations. The wage-worker produces for the common benefit, and when he is rendered incapable of earning by injuries caused by his employment he ought not to bear alone, and in the hour of his deepest need, the full burden of the loss. All the great nations have accepted the duty of social insurance except our own country; and it is not to be thought that we shall long remain, morally, in the rear.

"The commission was specifically and distinctly required by law to study the entire question in all its aspects, and to offer the draft of a bill embodying their conclusions in form for legislation. It should be noticed that they were required to offer a bill embodying the *principle of insurance* in some form: 'Whose duties shall be to thoroughly investigate and report to the Governor the draft of a bill providing a plan for industrial insurance and workingmen's old age pensions for consideration and action by the members of the Forty-fifth General Assembly.'

"To meet the needs of insurance in case of disability or death of workingmen several legal systems have been devised in civilized and progressive nations: (a) The method of making the employer liable for injuries to workmen so far as they are due to negligence or fault of the employer. This is the present law of Illinois and was formerly the law of European countries. (b) The method of requiring the employer to pay a measured compensation to workmen injured, or to the dependents of workmen killed by occupational accidents, whether the employer is negligent or not. This is the British law, and a bill to the same effect was introduced and defeated in Massachusetts, in 1904. (c) The method of encouraging or requiring employers to insure all workmen in some substantial company or association. This is substantially the French law of 1898, recently much extended in scope. (d) The method of compulsory insurance, the only complete and adequate system, as found in Germany and Austria. There are various intermediary types, but all tend toward compulsory insurance of some kind, since this alone is complete.

"The present law in Illinois is the ancient English common law interpreted by court decisions. The essential principle of this law is that an employer is bound to take reasonable care to prevent the injury of persons employed, and that an injured workman may recover damages for loss of income due to the negligence of the employer. The law recognizes an obligation of the employer to provide indemnity, but in practice this protection is utterly unsatisfactory. The law in its present state does not define the obligation nor measure its extent. The decisions of juries are so utterly inconsistent and capricious that they seem to have no uniform and equitable basis. Indemnity for loss of earning power should be based on the extent of that loss, but there is no definite legal tariff of rates for the guidance of courts; and this uncertainty makes it impossible for the business world to make regular provisions for the inevitable expense. But even if the law were explicit and clear in its definition of obligation, fatal objections remain. The workman must prove negligence, and this is extremely difficult. This state of the law, taken in connection with the crowded condition of the court dockets, provokes litigation and increases the proverbial delay of justice. The state is put to enormous cost on this account; the wounded workman or his bereaved family must wait for long years, meantime without means of support, until a decision is reached. Then it may be carried up to a higher court and reversed. If, by some chance, the workman or his family is awarded indemnity, a large part must be taken for legal expenses.

"Employers, on their side, are annoyed by the working of the law. They are compelled, in self-defense and to avoid ruinous awards of juries, to resist every case or to pay heavy premiums to liability insurance companies to carry a part of their risk. These premiums and expenses constitute an enormous addition to the cost of production of commodities, for which consumers have to pay, and cripple the nation in competition with other nations in the markets of the world. Even after paying the cost many of the workmen who are injured and have no legal re-

dress must be supported by public and private charity.

"The most serious objection to the law in Illinois and other states is that it affords at best protection in only a small number of cases. With all the partiality of juries for plaintiff, no lawyer can hope to win on the plea of negligence of the employer in more than a small percentage of cases, estimated by some at 10 to 15 per cent. of all accidents. Usually the accident is simply an inevitable consequence of the business and the ratio of accidents varies with the nature of the business, some trades being much more hazardous than others.

"It is obvious that, no matter how drastic and vigorous the liability law may be made by statute, it never can afford such protection as modern workingmen require. An employee who is disabled for life by an accident needs an insurance fund for his support, and if he is killed his family need help, whether the employer is negligent or not. No law which gives relief in only a small minority of cases can meet the situation. It is not prudent to educate masses of men to regard the law as a mockery and delusion.

"Furthermore, the only effect of severe legislation directed against employers is to cause them to combine to resist it, to organize to insure themselves against the higher degree of risk, and to intensify hostility and friction between men who are associated in enterprise. There is already more antagonism and bitterness than is wholesome for our national life; and no law ought to be framed which history proves must have the inevitable tendency to deepen, widen, and inflame social distrust and opposition of interests.

"It is sometimes argued that severe liability laws will make the employer more careful to prevent accidents; but experience in older countries shows that there is a more direct, certain, efficacious, and economical method.

"The present law is rapidly producing antagonism to casualty insurance companies because it perverts their social purpose by making them a barrier between employer and employee. Under the bill we propose, the casualty companies, as in England and France, would be

a natural mediator and friendly helper of both sides in interest, and thus their legitimate business would be increased without awakening distrust and hatred as at present is true. It is chiefly a defect in our law which has given occasion for the development of a kind of insurance which is satisfactory neither to employer nor workman; for the law actually creates an artificial risk of unknown extent against which men are constrained to insure at extravagant rates.

"Considerations of *timeliness* have induced us, though with *reluctance*, to offer a law which will not fully meet the requirements of the future, but we think it marks a definite stage of progress and will help to hasten the day of universal and complete insurance. Through actual trial and experiment its limitations will be discovered, its defects corrected, its provisions extended, and its administration improved.

"The law herewith offered conforms in its fundamental outlines and principles to the requirements of the joint resolution of the General Assembly of 1905; and if it is adopted and put in practice by employers it will afford to workmen vastly greater security than they can at present enjoy and will remove many of the anxieties of employers. It would afford a method of insuring all workmen in all hazardous occupations where it is used. It would give freedom to employers to avail themselves of any practical and reliable insurance agency, whether casualty company, mutual insurance association, or corporation fund. It would leave trade unions as free as they are now to increase their own funds and follow their own methods; because the law aims only at a minimum insurance at lowest cost, while workingmen may still increase their benefits in other ways and will have more money to do so. The law will guarantee to workmen that the employers pay a reasonable part of the premiums in consideration of corresponding relief and advantage to themselves. It would protect employers from being heavily fined and threatened with bankruptcy through excessive awards. It would tend to prevent accidents by making every employer and every employee an interested inspector.

"We have thought it wise to recommend related and supplementary legislation, as laws for improved protective methods and a scientific investigation of occupational diseases. As these points will be covered by other bills to be offered at this session, we shall go no further than to indicate their close relation with industrial insurance. But we wish to remind the Legislature that insurance organization tends to make factory inspection more thorough, effective, and economical; because under a system of insurance every employer and every employee is directly and financially interested in lowering the rate of premiums or increasing the amount of the benefits, and therefore is watchful to prevent both accidents and sickness by all possible means.

"Undoubtedly the time is not distant when our industrial states must take up the problem of legislation upon sickness insurance. To provide a scientific basis for such legislation we recommend the appointment of a competent commission having the power and the means to make a thorough study of the kinds, causes, and extent of diseases among workpeople, and the most modern methods of protection, prevention and insurance.

"The commission does not recommend any legal measures in relation to *old age pensions, invalidism, unemployment* and sickness insurance. It seems that the most natural point of approach to this whole range of much-needed protection is accident insurance.

"Already some of the greater corporations are organizing old age pension schemes, and these seem likely to multiply. Later they may be better for a measure of legal regulation or stimulus. At present it does not seem wise to lay before the Legislature drafts of laws for which the public is not quite ready, for which there has not been adequate time for discussion and for maturing plans.

"By a natural development accident insurance will lead on to sickness insurance and old age pensions; for it will soon be discovered that accidents are not the only important cause of distress in the families of workingmen; and the benefits which will be derived from accident insurance

will encourage the people to demand an extension of the principle to other fields.

"We recommend to the General Assembly :

"(1) The consideration of the essential features of the bill herewith presented, with such modifications as may be made after full discussion of all interests involved and represented.

"(2) A law almost identical with the law of 1905 (Acts, p. 293) on Mutual Casualty Insurance Companies, with such changes as will adapt it to the need of a mutual insurance association in which the interests of the workman are more directly considered and in the management of which they are represented in the relative measure of their contributions.

"We recommend the amendment of the law of 1905, entitled, 'An Act to provide for the organization and management of mutual insurance corporations for the purpose of furnishing insurance and indemnity against loss to members in consequence of accidents or casualties to any employee, person or persons occurring in or connected with the business of members thereof; and to control such corporations of this state and other states doing business in this state and providing and fixing the punishment for violation of the provisions thereof', by inserting as a second sentence in section 17, the following:

" 'When insurance companies are organized for the insurance of both employers and employees, or for the insurance of employees only, then the directors shall be composed of employers and employees respectively, in equal numbers.' "

THE BILL.

Owing to the fact that the commission could not thoroughly revise its bill before the day set for introduction, the form printed in the report was afterward modified and so introduced into the Legislature. I shall attempt to give only its essential principles.

Section 1 contains the most vital element :

"It shall be lawful for any employer to make a contract in writing with any employee whereby the parties may agree that the employee shall become insured against accident occurring in the course of employment which results in personal injury or death, in accordance with the provisions of this Act, and that in consideration of such insurance the employer shall be relieved from the consequences of acts of omissions by reason of which he would without such contract become liable toward such employee or toward the legal representative, widow, widower, or next of kin, of such employee."

Section 2 provides for the method of administration.

Section 3 defines the nature of the insured risk.

Section 4 describes the beneficiaries.

Section 5 defines the benefits in case of death, and temporary or permanent disability.

Section 6 requires the employer, in consideration of his exemption from other liability, to pay at least 50 per cent. of the premiums.

Section 7 provides for notification of injury.

Section 8 permits deduction of premiums of workmen from pay roll.

Section 9 provides for custody of funds.

Section 10 provides remedies for non-payment of premiums.

Section 11 provides for collective policies.

Section 12 covers the case of employees leaving service.

Section 13 provides for settlement of disputes by arbitration.

Section 14 protects the benefits from seizure for debt.

Section 15 provides that the employer remains liable under the common law if he *neglects requirements* for preventing injuries.

Section 16 requires record of contracts and policies with the Insurance Superintendent.

Section 17 requires quarterly reports of settlements and payments.

Section 18 provides for official forms of contracts and policies.

Section 19 forbids an employer to make the signing of this contract a condition of employment. This was added after conference with trade union men. In any case it would be law.

IV.

THE RECEPTION OF THE REPORT.

The *immediate* fate of the bill had been anticipated by the commission. The members of the commission realized from the beginning that their functions were chiefly educational and that neither employers nor employees were prepared for immediate action.

Few members of the Legislature had given any study to the matter. The Senate committee which was charged with the bill gave the commission a patient and intelligent hearing. The Governor did all that was in his power and commended the report for favorable consideration.

The lobby of manufacturers and railroads was there to defeat another bill for protective legislation and soon learned that our bill was for the present harmless; so that apparently they gave it no attention. Manufacturers who were consulted regarded it with favor.

The trade union representatives openly opposed the bill in the committee hearings and elsewhere; they were sent there with a mandate to kill the proposed law and to urge action for protective legislation and a more drastic liability law. It is manifest that unless their attitude is changed we cannot secure such legislation; for lawmakers will not urge measures against their protest.

It is therefore important for us to put ourselves in their place and try to understand their reasoning. From

repeated conversation, speeches and public articles, we may conclude that their antagonism to insurance schemes is due to several causes:

(1) It became clear that the trade unions have not had time to consider the methods of insurance; and they have from some source acquired some distorted notions of what it means. As one of the ablest men among them, himself a zealous and convinced friend of the movement, declared, "We did not begin soon enough". It is encouraging to know that many of these men are giving the subject serious thought; in due time they will become advocates of some form of insurance legislation.

(2) The workingmen have been trained by habit to look to the liability law for their legal rights in cases of injury. The law itself and the procedure of courts have drilled them to a combative attitude; the suit is for exemplary damages, retribution for personal wrong, and what is sought is punishment of a person guilty of an offense. As experience under the new Compensation law in Great Britain shows, this hunger for revenge is not easily removed, after generations of training under it.

(3) Workingmen have been taught by the common law and procedure under it to look and fight for large speculative awards from juries and courts. They hear occasionally of awards of \$5,000 to \$30,000, and the natural thirst of the gambler is unconsciously excited and made feverish in them. They do not think so much of the weary years of waiting; of frequent defeat and disappointment at the end; of the lion's share which goes to the lawyers as contingent fees. They have not fully comprehended the fact that only a small part of the accidents in occupations is really due to negligence of the employer. But many of the men have learned this lesson and they will teach the others in due time. The workman

cannot quite consent to give up this fascinating pursuit of a lottery chance, with rare grand prizes, for the sober and measured methods of insurance.

(4) Another cause of trade union antagonism to insurance lay in the feeling that our particular measure comes short of the best laws of Europe; that the premiums there are all paid by the employers, while we, because we despaired of success if we asked more, required them to pay only half of the premiums. It is acknowledged that there is justice in this claim.

It is possible that some other form of law may be found which will meet this difficulty. (For example, might not the benefits be reduced to an amount which would be covered by *half* the proposed premiums, and *all* paid by the employers, on condition that they are released from further liabilities? Then the workmen would be free to increase and even double the benefits if they chose by accepting the proposed contract, or by insuring themselves in some other way. Whatever is done at first will probably be a compromise measure which will educate employees and employers for something better.) Even as the bill stands it is better than any of the great railroad schemes, for in them litigation is avoided and the men pay almost *all* the cost of insurance.

(5) We did not learn that the trade unions feared that our bill would weaken attachment to the unions. It is possible that they were to some extent affected by this fear, which could easily be shown to be groundless.

(6) Perhaps the most decisive factor in determining the trade unions to antagonize our bill was their concentrated effort to secure protective laws.

We did, indeed, make common cause with them; we offered evidence to prove that accident insurance laws, by requiring benefits without regard to proof of negligence

in all cases of injury, would bring pressure to bear on employers to use devices for reducing the number and severity of accidents.

But where a body of men are intent on one single point they are apt to regard any other proportion as a kind of rival.

PROBABLE INFLUENCE OF THE MOVEMENT IN ILLINOIS
TO SECURE AN INDUSTRIAL INSURANCE LAW.

Two of the specific recommendations of the commission were adopted by the Legislature: (1) the requirement that manufacturers should report all serious accidental injuries to the Bureau of Labor Statistics at the capital; (2) the creation of a new commission to study the questions relating to industrial diseases.

The first of these measures will help to give us arguments and statistical data for an accident insurance law; the second will reveal the necessity for sickness and invalidism insurance. Both will keep the subject before the public mind.

The question will not down. The City Club and the Industrial Club of Chicago have already taken up the problem for serious consideration. Lawyers have begun to seek for a constitutional way out. Great newspapers are publishing stories of accidents, tragic in their consequences, which call for insurance protection. The charitable societies are opening their records to the public and revealing the causes of pauperism in accidents, diseases, invalidism, and old age. The Board of Cook County have instructed their agents to investigate the cases of dependent persons and families when their need of public relief was due to disease or accident.

The charitable societies are alive to the significance of the question and they are studying their records to discover how far the occupation ought to carry the burden of incapacity for earning a living.

In the preamble of both joint resolutions (for the insurance commission and for the industrial diseases commission) the Illinois Assembly fully committed itself to the modern doctrine of social legislation. There is room for doubt as to their appreciation of the meaning of their preamble; for it is said by knowing ones that they passed the resolutions without much consideration and chiefly to get rid of the importunities of the labor people and "reformers".

Experience with politicians teaches us that many of them have short memories, especially while public opinion is not yet quite an avalanche. But the record stands and it contains a statement of political principle which is in contradiction to the old economic views of individualists and to the common law doctrine of employer's liability; it is frankly and clearly an assertion of the duty of the state to care for the welfare of the working people.

Without committing ourselves as to the literary form of expression we may greet the substance of this assertion with satisfaction:

"It ought to be the duty of the law-abiding power of the state to prevent, so far as legislation and encouragement can modify, this deplorable state of affairs"; that is, the conditions under which working people, sober, industrious and frugal, after faithful service in multiplying the comforts of civilization, are denied a share in enjoyment by reason of accidents, disease, and old age.

House Joint Resolution of March 12, 1907 (concurred in by the Senate, March 20), says:

"It is universally recognized as the *moral duty* of every civilized state to secure and publish information of vital importance to all citizens to promote safety and health, and to *foster and regulate insurance against loss of income by accident and disease.*"

OUTLINE OF A PROGRAM OF SOCIAL LEGISLATION WITH SPECIAL REFERENCE TO WAGE-EARNERS.

PROFESSOR HENRY R. SEAGER.

(Mr. Seager's address was confined to explaining and discussing the *Outline* which follows, printed copies of which were distributed before the meeting.)

[INTRODUCTION.

In the field of social legislation the United States is behind the more progressive countries of Europe. Interest in the subject is widespread, however, and the time seems opportune for a discussion of a program of social legislation by the members of the American Association for Labor Legislation. The following *Outline* is intended to serve as a basis for such a discussion at the Madison meeting, December 30, 1907.

The ends to be aimed at in any program of social legislation are:

I. To protect wage-earners in the continued enjoyment of standards of living to which they are already accustomed.

II. To assist them to attain to higher standards of living.

I. MEASURES TO PROTECT PREVAILING STANDARDS OF LIVING.

The principal contingencies which threaten standards of living already acquired are: (1) industrial accidents; (2) illness; (3) invalidity and old age; (4) premature

death; (5) unemployment. These contingencies are not in practice adequately provided against by wage-earners themselves. In consequence the losses they entail, in the absence of any social provision against them, fall with crushing force on the families which suffer from them, and only too often reduce such families from a position of independence and self-respect to one of humiliating and efficiency-destroying social dependency. The following remedies for the evils resulting from this situation are suggested.

(1) Employers' liability laws fail to provide adequate indemnity to the victims of industrial accidents because in a large proportion of cases no legal blame attaches to the employer and because litigation under them is costly and uncertain in its outcome. Adequate indemnification must be sought along the line of workmen's compensation for all industrial accidents at the expense of the employer (the British system) or of compulsory accident insurance (the German system). The former seems to accord better with American ideas and traditions.

(2) The principle of workmen's compensation may be extended to include indemnity for loss of wages due to trade diseases. Provision against illness not directly traceable to the employment must be sought either in compulsory illness insurance or in subsidized and state-directed sick-insurance clubs. Trade unions may assume the functions of such clubs in organized trades. The latter plan seems better suited to present American conditions than compulsory illness insurance.

(3) Provision against invalidity and old age may be through compulsory old age insurance, or through state old age pensions. The latter, though more costly, are believed to be better suited to American conditions, when hedged about by proper restrictions, than compulsory old

age insurance with the elaborate administrative machinery which it entails.

(4) Premature death may be provided against by an extension of the machinery for caring for the victims of industrial accident and of illness to provide for their families when accident or illness results fatally.

(5) Provision against losses due to unemployment is attended with great difficulties because unemployment is so frequently the consequence of incapacity or of disinclination for continuous labor. The most promising plan for providing against this evil appears to be through subsidizing and supervising trade unions which pay out-of-work benefits to stimulate this side of their activity. Public employment bureaus and industrial colonies for the unemployed may also help to alleviate the evil of unemployment.

Adequate social provision against these five contingencies along the lines suggested, would, it is believed, go a long way towards solving the problem of social dependency. If these concessions were made to the demands of social justice, a more drastic policy towards social dependents than public opinion will now sanction might be inaugurated with good prospect of confining social dependency to the physically, mentally, and morally defective.

II. MEASURES TO ELEVATE STANDARDS OF LIVING.

The primary conditions essential to rising standards of living are energy and enterprise on the part of wage-earners, and opportunities to make energy and enterprise count in the form of higher earnings. The principal contributions which social legislation may make towards advancing standards of living in the United States are believed to be: (1) measures serving to encourage saving

for future needs on the part of wage-earners by providing safe investments for savings; (2) measures protecting wage-earners from the debilitating effects of an unregulated competition; (3) measures serving to bring within the reach of all opportunities for industrial training. Standards of living will also be advanced, of course, by nearly all measures calculated to promote the general well-being, such as tax and tariff reform legislation, laws safeguarding the national domain, the public regulation of corporations, especially those with monopolistic powers, etc.; but these are not usually classed under the head of social legislation.

(1) The greatest present need under this head is for a postal savings bank like those of European countries. The advantages of a postal savings bank over privately managed banks are the wider distribution of places of deposit, post-offices being located in every section of the country, and the greater confidence depositors would feel in such a bank. Once established the postal savings bank might enter the insurance field, as has the British postal savings bank, not as a rival of privately managed insurance companies, but to bring to every wage-earner the opportunity to secure safe insurance. Next to providing opportunities for safe investment and insurance, the government has an important duty to perform in supervising the business of privately managed savings banks and insurance companies. Notwithstanding the progress made in recent years in the United States in this field, there is still something left for social legislation to accomplish.

(2) If energy and enterprise are to be kept at a maximum, wage-earners must be protected from exhausting toil under unhealthful conditions. Skilled wage-earners can usually protect themselves through trade

unions, but unskilled workers, women and children, require legal protection. Under this head belong, therefore, the familiar types of protective labor laws. The following may be specified:

(a) Laws prohibiting the employment of children below fourteen in all gainful pursuits. Such laws should be uniform throughout the United States and rigidly enforced by means of employment certificates based on convincing evidence of age and physical examination to determine fitness. As provision for free public education is made more adequate to present needs the minimum age may be advanced perhaps to sixteen.

(b) Laws limiting the hours of labor of young persons over fourteen. Protection here should extend to eighteen, at least in factory employments, and employment certificates should be required of all under that age.

(c) Laws limiting the hours of labor of women. In the regulation of women's work in the United States the principal needs are uniformity and machinery for efficient enforcement. The last is facilitated by the plan of specifying in the law the working period for the protected classes, and American courts must be brought to see the reasonableness (administratively) of such prescriptions. The nine-hour day and prohibition of night work set a high enough standard until greater uniformity and more efficient enforcement shall have been secured.

(d) Prescriptions in regard to sanitation and safety appliances. General prescriptions in regard to ventilation, etc., need to be made more exact, and much more attention needs to be given to the special regulation of dangerous trades, the existence of which has been largely ignored thus far in American legislation.

(3) The chief reason for restricting the labor of children and young persons is to permit the physical and mental development of childhood and youth to proceed

unhampered and to ripen into strong, vigorous, and efficient manhood and womanhood. To attain this end, it is necessary to provide not only for wholesome living conditions and general free public education, but also for special industrial training for older children superior to the training afforded in modern factories and workshops. The apprenticeship system now fails as a method of industrial training even in those few trades which retain the forms of apprenticeship. There is urgent social need for comprehensive provision for industrial training as a part of the public school system, not to take the place of the training now given to children under fourteen, but to hold those between fourteen and sixteen in school. As this need is supplied the period of compulsory school attendance may gradually be extended up to the sixteenth year. The guiding principle of such industrial training should be that it is the function of free public education in the United States to prepare children not only to lead useful, well-rounded, and happy lives, but to command the earnings without which such lives are impossible.]

No one will question the propriety of a discussion of a program of social legislation by this Association. Unlike the Economic Association and the Sociological Society, it is committed by its very name to a program: the study and promotion of wise labor laws. But, one inevitably asks, what laws? It was to focus attention on this question that I was asked to submit a program.

In drawing up the above *Outline* I have assumed that the great objects to be aimed at are:

I. To protect wage-earners in the continued enjoyment of standards of living to which they are already accustomed, and

II. To assist them to attain to higher standards of living.

The principal contingencies which threaten standards of living already acquired are: (1) industrial accidents; (2) illness; (3) invalidity and old age; (4) premature death; (5) unemployment. To every worker among the poor these phrases suggest a series of melancholy pictures. The lame and the halt, the victims of the white plague and of the other scourges to which those who live and work under unwholesome conditions are subject, the aged poor who crowd our almshouses, the death-roll of industry and that pitiful train of widows and orphans who are the chief clients of our private charities, and finally the unemployed, whose position weighs so heavily on our hearts to-day,—these make up the great army of our social dependents. If the poverty from which they suffer could be remedied, a long step would be taken towards the elimination of poverty, and this might be done by providing in advance against the contingencies which drag them down.

This is no new thought. Students of economics have long recognized the evils I have enumerated as among the principal causes of poverty. But until recently they have believed that the only way to deal with these evils was by educating wage-earners to provide themselves against them. Emphasis has been laid upon individual thrift and forethought. Wage-earners have been exhorted to accumulate savings deposits and to insure their lives for the benefit of their families. I do not wish to criticise, much less to oppose, such efforts. But I think we must all admit that the development of saving habits among wage-earners is painfully slow. The truth is that only a small proportion of wage-earners make, or feel that they can make, any adequate provision for these contingencies to which they are all liable. To the great majority there is never a time when their income seems more than sufficient for their present needs. If they

retain their health and strength and are not thrown out of employment, they are able to provide for their families according to their standards of living. But if the unexpected happens and the steady flow of wages is interrupted, then in a few weeks, or at best a few months, they are reduced to poverty. And the unexpected is constantly happening to a large number of wage-earners. The resulting loss in wages falls with crushing force on the families affected and drags them down from a position of independence and self-respect to that of social dependency.

It is my contention that these evils that are not in practice provided against by individual thrift and forethought can be and should be provided against by collective action. And this contention is not based on a mere abstract study of the problem, but on a consideration of what is actually being done in other countries. Let us take up these evils one by one.

(1) The attitude towards industrial accidents which still guides our social policy grows out of a theory of wages which economists no longer accept. It used to be taught that competition tends to adjust wages in different employments so that those who work in dangerous trades are compensated by higher pay for the risks they run. This being the case, there seemed to be no special reason why the state should concern itself with accident insurance. Let the workers in dangerous trades use their higher wages to insure themselves against accidents in ordinary commercial companies. They know what is best for themselves, and, if left alone, will attend to it. So ran the classical economic argument.

This theory is so plausible that it might still be accepted if it were not completely disproved by the facts. Wage statistics show, however, that wages in dangerous trades are little, if at all, higher than in comparatively safe employ-

ments. Knowing this to be the case, it is not difficult to perceive the defect in the reasoning of the older writers. They assumed that each workman, after making a careful study of the proportion of accidents and deaths in each occupation open to him, would look upon himself as an ordinary insurance risk and demand full compensation in higher wages before venturing into a dangerous employment, or, if not that every workman would do this, that at least enough would do it to bring about the assumed result. Only a little acquaintance with flesh and blood workmen is needed to discredit these assumptions. Few workmen have any but a vague and often erroneous notion of the relative danger of their employments. Students of economics may know from the official statistics that in the United States in the year ending June 30, 1906, one trainman out of every 124 employed on the railways of the country was killed and one out of every eight was injured, but how many of the trainmen themselves know this? Moreover, in how few of the dangerous trades carried on in this country is it possible even for students of economics to know the extent of the danger incurred, in the absence of trustworthy statistics on the subject. But even more important than ignorance as a factor in the situation is the tendency of the normal individual to regard himself as an exception. An intelligent trainman may know that there is one chance in eight that he will be injured in each year he is employed, but does he expect to be injured? Not a bit of it. Borne along by an innate optimism and by belief in his personal luck, he is indifferent to the dangers that surround him. Thus workmen in dangerous trades continue year after year to accept wages not at all proportioned to the risks they run. When the accident befalls them that was so certainly to be expected, they are, in the great majority

of cases, without the provision necessary to preserve their families from destitution.

The law of employers' liability as now in force in the United States mitigates but little this situation. Under it, it is necessary to prove some negligence on the part of the employer to have been the cause of the accident, and statistics indicate that this is possible in only about one-fourth of the cases. Even in the one-fourth of accident cases where the employer is liable for damages, fully half of the compensation is wasted on attorney's fees, and it is left to chance and the shrewdness of the so-called "ambulance chasers" to determine what workers shall obtain the compensation to which the law entitles them. The result is satisfactory neither to employers nor to employees.

That a better system is entirely practicable is proved by the experience of nearly all of the important countries of Europe. In Germany insurance funds are required to be collected at the expense of employers, out of which the victims of all industrial accidents are compensated. Even more instructive for us is the British system of workmen's compensation extended and perfected by legislation enacted by the present Parliament. Under the English law the cause of the accident, unless it be the "serious and wilful misconduct" of the workman himself, is not considered. All employers are required to compensate their workmen for the losses they suffer in consequence of industrial accidents, in accordance with a fixed scale. Thus, injuries to the workers are included among the expenses of production, like injuries to the dead plant. Employers pay premiums to accident insurance companies to protect their employees in the same way that they pay premiums to fire insurance companies to protect their buildings. When workers are injured they continue to receive incomes on which they can live and preserve their

self-respect, instead of being thrown on the community, with the humiliation and loss of ambition and efficiency which this so often entails. Thus they more quickly return to the industrial ranks,—or, if the injury involves permanent disability, become the pensioners of the industrial army, honorably retired from a service which they can no longer continue.

That these systems, copied widely by the other states of Europe, serve largely to eliminate the poverty due to industrial accidents, no one who has studied their operation will deny. The objections made to them in this country are that they involve too great interference with the liberty of the individual. Under both employers are compelled to provide compensation for their workmen, whether they wish to or not, and they cannot contract out of their liability, even if the workmen assent to such an arrangement. This seems to many American business men to be tyrannical. They resent government interference carried to such lengths. But is it not essentially fair that the cost in maimed limbs and shortened lives of producing goods should be added to the other costs of production which the employer has to bear? Will he not as readily pass on this new expense to consumers in slightly higher prices as he does his other expenses? And is it not just that consumers, for whose benefit all production is carried on, should bear this expense? Both reason and experience approve the plan, and it is only necessary to educate public opinion on the subject to have England's example followed in the United States, and to have the poverty and dependency due to this first cause largely eliminated.

(2) Provision against losses due to illness is to be sought along similar lines. Germany, as is well known, cares for her wage-earners who are the victims of illness also through her system of compulsory insurance, which

now, after a twenty-five years' trial, is very generally approved by all classes. The United Kingdom has just extended her system of workmen's compensation for industrial accidents to include compensation for well-recognized trade diseases. The plan of providing against the less special illnesses to which wage-earners are liable that seems best adapted to English and American conditions is through state regulated and subsidized sick-clubs. Perhaps trade unions, which now quite commonly include sick benefits among their insurance features, can be developed so as to render efficiently this important social service. Whether this be desirable or not, it is clear, from Germany's example, that this cause of poverty can also be controlled through collective action. Such a policy is a necessary supplement to the crusade against consumption, yellow fever, and certain other diseases in which the United States is already taking an honorable part.

(3) Few people, who have not looked into the question, realize what an important factor old age is in the problem of poverty. In the United Kingdom careful investigations indicate that nearly 60 per cent. of the adult paupers of the country are over 65 years of age. In this country the proportion of aged paupers must be nearly as great. They so largely predominate among the inmates of the almshouse on Blackwell's Island that a few years ago the name of that institution was changed to "Home for the Aged and Infirm". The two methods that are being tried abroad for caring for the aged poor are represented by Germany's compulsory insurance plan and by Denmark's old-age pension plan. The latter, with some modifications, is almost certain to be imitated by the United Kingdom in the very near future. (In fact, Parliament has so fully committed itself to some sort of old-age pension plan that the imperial budget for the current year includes a fund of £2,000,000 set aside for this

purpose.) Germany's compulsory insurance method of providing pensions for superannuated wage-earners is perhaps the least satisfactory part of her system. Employers object to it on the ground that old age is not the result of a person's occupation, and that, therefore, there is no reason why they should be called upon any more than other citizens to provide old-age pensions. From the point of view of employees, it is doubtful whether the compulsory thrift which it entails has any tendency to promote voluntary thrift. Wage-earners come to look upon their contributions to the insurance funds as taxes,—just and desirable taxes, no doubt,—but still as taxes, which they bear as reluctantly as any of the other burdens which the government imposes upon them. Finally, from the point of view of the state, the plan of providing insurance against old age necessitates a much more elaborate and costly administrative machinery than does the plan of paying old-age pensions out of general revenues.

For these reasons the general trend as regards provision for old age appears to be towards old age pensions at the expense of the government. Such a plan seems to most American business men fraught with danger. It is criticised as tending to discourage individual thrift and to teach the people to look to the government for benefits which they ought to provide for themselves. Some even go so far as to predict that its introduction would inevitably lead to the overthrow of the Republic, as politicians would seek to curry popular favor by making the pensions larger and larger, until they finally absorbed all the government's revenues. It would take too long to try to answer these objections, but there are certain considerations that should be opposed to them. The question is not between providing for the aged poor and not providing for them. Provision is already made in almshouses for persons unable to support themselves. It is rather be-

tween almshouse or workhouse relief or the more generous and flexible relief afforded by pensions. And there is little danger of increasing the evil to be remedied, old-age poverty, by adopting a generous policy. The number of persons over sixty-five is not going to be increased by a pension plan—except as some are enabled to survive a few years longer. Nor are the habits of life before that age is reached going to be materially affected by the promise of a pension afterwards. Generally speaking, it is not fear that makes men prudent and thrifty, but hope. People are more apt to save to provide for themselves some few comforts in their old age—their necessities being assured—than they are to save for their necessities when they have little prospect of being able to save enough. The problem has been debated in England for twenty-five years, and the arguments for old-age pensions presented by Mr. Charles Booth, or even more recently by Mr. Sutherland, in his book on *Old Age Pensions* which has just appeared, have gained more and more adherents, until to-day both the great English parties stand committed to some kind of old-age pension system. I believe that we shall make no mistake in following European examples as regards this part of the problem also. We all appreciate the advantages of old-age pensions when they affect persons of our own class, as Carnegie pensions for college professors. It is only necessary for us to realize that wage-earners are not essentially different in their psychology or their reaction to changes that make life more assured or open a wider field for ambition, to convert us to believe in old-age pensions for wage-earners as well. Such pensions, in my opinion, can do little harm, and by saving respectable old age from the humiliation of dependence, they can contribute largely to the sum of human happiness.

(4) Little need be said about providing against pre-

mature death, because it is necessary merely to adapt the system of accident and illness insurance or compensation to the cases where accidents or illness result fatally to make provision for surviving dependents. Under the English system, when accidents or trade diseases result in death, employers must pay in a lump sum the compensation required, and what this is is determined by the number and degree of dependence of the survivors, the maximum never exceeding, however, \$1500. This sum may be paid over to the dependents or invested on their behalf, as may seem best to serve their interests. Any plan for providing comprehensively against losses due to accidents or illness which we may adopt in the United States should have similar features.

(5) I have put unemployment last among the contingencies to be provided against, because it offers the greatest difficulties. The unemployment which I have in mind in this connection is not that which becomes acute during a period of industrial depression. This is far too large a problem to be taken up this afternoon. It is rather that which occurs all the time in consequence of changes in industrial methods, the shifting from one employer to another, the rise and fall of particular firms, and seasonal variations in the demand for labor. So far as I know, all plans of providing incomes for the unemployed that have been tried have been found to do more harm than good, except those operated by trade unions. Trade unions can provide out-of-work benefits and see to it that they are not abused by the lazy and the shiftless. In my opinion, this is a good reason for advocating a more constructive policy towards labor organizations. Under suitable governmental regulation and control, they could undertake this and other important functions for the common benefit, and I should even go so far as to advocate, having the right kind of unions directed by the right kind

of leaders, subsidizing them, as has been done by some Belgian cities, to look after the unemployed in their respective trades. This is very like advocating a return to the old guild system—but the guild system, before it was demoralized by sweeping industrial changes with which it could not keep pace, was a valuable element in the industrial organization which preceded the introduction of steam-driven machinery.

In these different ways I believe that it will be entirely possible to reduce very greatly the number of persons who sink to the position of social dependents. And as we make it easier for the self-respecting family to maintain its standard of living, we should at the same time make it more difficult for the shiftless, loafing type of man to get along at all outside of an industrial colony. It is a significant fact that the country which was the first to provide old-age pensions for the respectable aged poor, Denmark, is also the country which deals so firmly with the vagrant type that tramps are there unknown. With this vigorous policy towards the able-bodied loafer to supplement the measures protecting the standards of living of those who have not learned to loaf, I believe social dependents might be reduced to that small residuum of physical, mental, or moral defectives.

The second part of the Program which I have outlined touches on some of the means by which standards of living might be raised. The proposals should speak for themselves. And, if they do not, time will not permit me to speak, except most briefly, for them. The argument for postal savings banks has been greatly strengthened by our experiences during this last winter. The run on private savings banks, which was an important factor in the October panic, would hardly have occurred had we had a postal savings bank. The exportation of millions

of dollars to the postal savings banks of European countries, which added not a little to the severity of our stringency, would certainly not have occurred. Finally, the losses which the failure of private savings banks have inflicted on wage-earners, and particularly on poor Italians, at the very period when they could least afford such losses, might have been largely avoided had our government undertaken, as do the governments of most European states, to act as custodian of the savings of the country's workers. All of the technical arguments against adopting Postmaster General Meyer's recommendations on this subject seem to me to be trivial in comparison with the great social benefits that a postal savings bank would confer on the wage-earners of the country.

In regard to labor legislation, I shall not try to add anything to what is said in the *Outline*, except to insist that this issue is decided in the public opinion of the people of the United States, and that it is now a question merely of the details of legislation and of the attitude that the courts may take towards the laws that are passed. On the whole, the decisions of the courts are increasingly favorable to restrictive labor laws. That they are not more so is due, not to any real obstacle to any desirable regulation in our written constitutions, but to the failure of our judges to understand the industrial conditions which make such regulations reasonable measures for the protection of the public health. When the Supreme Court of the United States solemnly decides that mining in Utah is such a dangerous occupation that the work day may properly be limited to eight hours, and a little later that the baking industry in New York is so innocuous that a ten-hour law involves an unwarranted invasion of private liberty, it shows merely that the justices know more about the mining industry than they do about present-day city bake-

shops. Here, again, education and enlightenment, including our judges and law-makers as well as our economists and social workers, is all that is needed to put us abreast of the most advanced European countries.

Parallel with restrictions on the hours of labor of children and women must go better and better provision for industrial training. This country affords unrivalled opportunities for the efficient worker, and the elevation of standards of living will depend, more than on anything else, on the sort of equipment for the working life we provide for those who must be self-supporting. While continuing to improve our public school system for children under fourteen, we must, it seems to me, revolutionize our system of education for children from fourteen to sixteen or eighteen. The great majority of such children must become bread-winners immediately on leaving school. The schools must be shaped with a view to this practical necessity. The only way in which they can hold these restless young workers is by equipping them to command higher wages and prospect of more rapid promotion than they can secure by leaving school as soon as the law permits them to begin to work. This can be done only, I believe, by providing industrial or trade training as alternative to the literary training now offered. The objection usually made, that this will commercialize our schools, is beside the mark, unless it is claimed that a good trade-school has more of a tendency to commercialize than the workshop, store, or factory to which these young people would otherwise go. We must frankly face the fact that the all-important problem for the children of wage-earners is the bread-and-butter problem. This underlies all other problems, and by helping children to solve it we will at the same time afford the widest scope for the development of their higher faculties and nobler aspirations. To believe this is not to take a material or

commerical view of life, but to see life in all its fullness and to provide for its needs in the order of their importance.

The Social Program which I have presented is not complete, nor intended to be complete. It includes only measures bearing rather directly on the problem of poverty and it offers no suggestions touching the very practical question where the money is to be secured which will be needed, for example, for old-age pensions and for industrial education. So far as it goes, however, I believe it is an entirely practicable program and that it will accomplish the principal result claimed for it, that is, reduce the problem of poverty to manageable proportions by excluding from social dependency all but the physically, mentally, or morally unfit. Its introduction must be secured gradually, but since it includes no single measure that is not in actual operation already in some part of the world, it does not seem visionary to anticipate that its introduction can be secured. Let me bespeak your co-operation in urging such of these measures as you approve upon public attention.

Proceedings of the Second Annual Meeting.

American

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I.
SECOND ANNUAL MEETING
OF THE
AMERICAN ASSOCIATION FOR LABOR LEGIS-
LATION
DECEMBER 29-30, 1908.

The American Association for Labor Legislation held its second annual meeting at Atlantic City, December 29 and 30, 1908. The most important action taken was the provision made for a salaried secretary who shall devote his entire time to the management of the affairs of the Association and the organization and support of state branches. This fortunate arrangement grew out of the remarkably successful meeting and the intense interest in the work of the Association which was evident at all of its sessions.

The forenoon session of December 29th was arranged as a joint meeting with the American Economic Association. Professor Henry W. Farnam delivered his address as President of the Association for Labor Legislation. At the same meeting the subject of Employers' Liability and Workmen's Compensation was presented by Miss Crystal Eastman of the Pittsburgh Survey, and Dr. Max O. Lorenz of the Wisconsin Bureau of Labor and Industrial Statistics. The Canadian Industrial Disputes Act was discussed by Professor Adam Shortt of the Civil Service Commission of Ottawa, and Dr. Victor S. Clark of the United States Bureau of Labor. These papers form the third part of this report.

The separate session was held in the forenoon of December 30th. President Farnam outlined the organiza-

tion of the International Labor Office and of the different European Sections in the following words:

PRESIDENT FARNAM.

"It will be well to explain what the International Association is and to characterize some of its branches. The Association was formed in 1900 at a conference held in Paris in connection with the Universal Exposition of that year. This congress was attended by delegates from a number of states, including the United States, and the statutes of an International Association for the legal protection of workers were adopted upon the report of Professor Mahaim of the University of Liège. The Association was to be a federation of autonomous sections, but to have its head-quarters in Switzerland, and its president and vice-president were to be Swiss statesmen. The purposes of the Association as enumerated in its Statutes are five, and will be found appended to the constitution of the American Section.

"In 1901 the International Labor Office was established in Basel and Professor Stephen Bauer was put at the head of it. It has since developed into a well equipped establishment with a staff of experts. It occupies quarters placed at its disposal by the government of the canton of Basel. It has collected a large library on the subject of Labor Legislation. It publishes a bulletin in French and German and supplies the material for the English addition. It is maintained by the contributions of fourteen states and twelve sections. Norway, Sweden and Luxemburg make governmental contributions without having sections. England has a section but its government does not contribute. The total expenses for a year are about sixty-six thousand francs or between thirteen and fourteen thousand dollars. Its sections are now established in the following countries: Germany, Austria,

Belgium, Denmark, Spain, United States, France, England, Hungary, Italy, Holland, and Switzerland. Of these sections the German, Austrian, Belgian, French, Hungarian, Dutch and Swiss were organized at once, the others have been successively organized since that time. The total membership of the sections is estimated at something over four thousand, but in a good many cases a number of memberships are held by organizations, so that the number of persons affiliated with the sections is very much greater than these figures would indicate, being estimated at over 5,000,000.

"There is a considerable difference between the composition, activity, and general character of the several sections. The German Section even bears a distinctive name: *Gesellschaft für Sociale Reform*. It holds its general meetings once in two years and it discusses not only labor protective legislation in the narrower sense, but labor policy in general. Its total membership is over sixteen hundred, but in this are included 107 labor organizations having over 1,000,000 members, also fourteen employers' associations and nineteen political associations. The President is *Freiherr von Berlepsch*, a distinguished Prussian statesman and former minister. Practically all the political parties are represented in its membership excepting the socialists. They are not excluded as such, but do not appear inclined to join. Its publications, now numbering some twenty-seven, are issued under the title, "*Schriften der Gesellschaft für Soziale Reform*."

"The French section is much smaller, containing some five hundred members, with provincial sections in Lyon and Lille. Its membership includes all parties. Its president, *Monsieur Millerand*, is a moderate socialist and former minister of labor. But it contains clerical members, conservative representatives, prominent members of

the legislature, etc., and has published a number of books relating to labor legislation.

"The Swiss section also aims to be representative of different phases of political opinion and is distinguished by having Cantonal branches so that it is organized on a kind of Federal system. Its membership is about six hundred.

"The Belgian section is very small. Its membership, according to the last official account, was seventy-eight. It does not aim to be popular. It exists mainly for the purpose of study and its membership is intended to reflect as nearly as possible the distribution of parties in the Belgian legislature; that is to say, about half belong to the Catholic party, the other half being divided pretty evenly between liberals and socialists. As explained to the speaker by M. Du Bois, the director of the department of labor, there is little need of carrying on a propaganda in Belgium in order to get people interested in the social question; it is always on the tapis. To organize a society for the purpose of advocating it would be like organizing a society to enable rich people to take vacations.

"The English section which was formed in 1906 is also small, but rather by accident than by design. According to the report of last year it contained 122 members, of whom 72 were individuals and 30 societies. It is noted for the activity of women in its management. About one-quarter of the individual members are women, and its very efficient secretary is Miss Sanger.

"As already stated the objects of the International Association are of two kinds, scientific and practical, the latter referring mainly to International treaties. For Constitutional reasons the United States cannot be expected to take part in these. Our relations are, therefore, mainly with the scientific and educational side of the

work. On this side again it is clear that there must be a reciprocal relation. We must give as well as take. The collections of the Bureau are made accessible to us through circulars and reports. On the other hand we must keep it informed regarding the progress of legislation in our country and other matters which may come up. We are at present engaged in studying among other topics the execution of labor laws for the International Association. There is an impression abroad that most of our labor laws are executed in a very inefficient way. In many of the States this is doubtless true, but it is not true universally. By obtaining the facts we may be able to correct an opinion which fails to do us justice. For the sake of gaining information on this and other points we must, of course, be in touch with what is done in the several States, and for this purpose we should be represented in every State by some one who has access to the doings of the Legislature. Through the Bureau of Labor Statistics and other governmental agencies our American Association may thus become a medium by which greater enlightenment may be secured for our own legislation and through which in turn the rest of the world may be better informed than it now is regarding what is done here."

Mr. C. H. Verrill, representing the United States Bureau of Labor, and Mrs. Florence Kelley, representing the American Section, presented reports of the biennial meeting of the International Association for Labor Legislation at Lucerne, Switzerland, in September 1908. (A complete report of the action taken on each subject was printed and distributed to members of the American Section.) Mr. Verrill called special attention to the organization and growth of the International Association and, in a concise summary gave the conclusions reached at the Delegates' meeting.

MR. C. H. VERRILL.

"One hundred and one delegates were in attendance at the Lucerne meeting, the greatest number in the history of the Association. Many of these have been active in the work of the Association from the beginning and are widely known as students of social and industrial problems. Of the fourteen governments which subsidize the work of the International Labor Office, thirteen were represented by nineteen delegates. The twelve National Sections were represented by eighty-one delegates and alternates. The Governments represented by official delegates were: Austria, Belgium, Denmark, France, Hungary, Italy, Luxemburg, Netherlands, Norway, Sweden, Switzerland, and the United States. The Holy See also was represented by one delegate. Of the National Sections, France sent the largest representation, namely, sixteen, while Germany sent fifteen and Austria eleven.

"The attendance at the Lucerne meeting is a good indication of the growth in interest and influence of the Association. At the first general meeting in Basel in 1901, out of forty-one delegates, only four were Government representatives; at the second at Cologne in 1902 out of sixty-five delegates, twenty-two were Government delegates; and at the later meetings at Basel in 1904 and at Geneva in 1906, the numbers were well maintained.

ATTENDANCE AT BIENNIAL GENERAL MEETINGS OF THE
INTERNATIONAL ASSOCIATION FOR LABOR LEGISLATION,
1901 TO 1908.

Meeting	Year	Delegates		
		Government	National Sections	Total
1. Basel	1901	4	31	41
2. Cologne	1902	22	43	65
3. Basel	1904	16	38	54
4. Geneva	1906	13	66	79
5. Lucerne	1908	20	81	101

"The report of the Board of the Association shows that the growth in membership during the eight years since its organization has been steady, from 1,608 in 1901 to 3,852 in 1906, and 4,303 in 1908. But these numbers do not adequately represent the strength of the Association, for among the members enumerated above are unions of employees with a membership of 5,750,000. Germany leads in membership with 1695 members, Switzerland has 596 and France 466. The United States Section, only two years old, has nearly 400 members.

GROWTH OF THE INTERNATIONAL ASSOCIATION,
1901 TO 1908, BY SECTIONS.

Sections	Number of Members				
	1901	1902	1904	1906	1908
Austria	182	252	251	294	290
Belgium	66	74	77	78	78
Denmark				97	147
France	113	134	290	450	466
Germany	673	980	1331	1635	1695
Great Britain				67	117
Hungary	70	332	335	241	192
Italy	71	80	80	120	120
Netherlands	175	178	183	193	200
Spain				66	103
Switzerland	238	243	476	444	596
United States				140	272
Individual Mem- bers	20	45	57	27	27
Total	1608	2318	3080	3852	4303

"The general governmental financial support now given is worthy of note. During 1907 the fourteen Governments which subsidized the work of the Association, contributed about 55,000 francs. This, with contributions of the National Sections, individual members, etc., gives the Association an income of over 71,000 francs annually.

"The subsidies to be granted by the various Governments for 1908 as provided by their budgets, are as follows:

Governments	Government Contribution, 1908. France.
Switzerland	12,000
France	10,300
Germany	10,000
Austria }	8,000
Hungary }	
Netherlands	4,150
Belgium	2,000
Italy	2,000
Sweden	1,000
United States	1,000
Spain	900
Norway	700
Denmark	700
Luxemburg	500
Total	53,250

"A comparison of the work of the Lucerne Conference with that of preceding Conferences shows that it marks a distinct advance both in the subjects dealt with and the action taken. This advance, is seen in:

(1) The growing importance given to the subject of the administration of labor laws. It has now become established as a matter of regular report. This, covering as it does the field of factory inspection, should be of much value in this country.

(2) The adoption of a definite declaration of principles in regard to stricter regulations of child labor and the night work of young persons.

(3) The declaration for the establishment by law of a maximum working day of ten hours for women and the prohibition of night work.

Ten hours for men in textile industry.

Eight hours in coal mines underground.

(4) In Home Work a declaration for:

Trade organization and collective agreements.

Wages' boards, with the view of establishing adequate wages.

Application of factory legislation.

(5) A definite formulation of principles on which the restriction of use of lead and phosphorous poisons should be based.

"Here is indicated definitely the field in which the work of the Association will probably be carried on for a number of years to come. By the regular steps of investigation and publication of the facts, discussion and formulation of remedies, and, finally, the application of the remedies by legislation in the individual countries and by international treaty the Association will endeavor gradually to realize the conditions which it has here set before it to secure.

"Through this Association, by a coöperation which takes advantage in each country of the best experience of every other, costly delays and mistakes may be avoided and reasonably rapid and intelligent progress made toward a sane regulation of labor conditions that must be the ultimate goal in every country."

MRS. KELLEY.

Mrs. Kelley in her report dealt entirely with the two Commissions to which she was assigned: that which dealt with child labor and manufacture in the home, and that which dealt with the working hours of adolescents. She concluded her report with the following remarks.

"Two striking points were observed in the discussions both in the Commissions and in the general Conference sessions. The first was the general assumption by delegates and officials that the laws of the individual states of the United States were not to be taken seriously for

two reasons, namely, that they are not enforced or obeyed, and that where they do exist they are so exceptional as not to count in the general view of the state of labor legislation throughout the industrial world. The second striking point is the universal contempt for registration of homework and homeworkers as means of dealing with the sweating system. It seemed to be universally accepted that we have tried registration and proved it so hopeless a failure that farther discussion thereof is waste time.

"It is highly desirable that the American Association for Labor Legislation should make known abroad, by every means open to it, such progressive measures as the Illinois and Ohio statutes prohibiting work of boys at night even in glassworks; and the New York statute which forbids children to work in all manufacture after 5 p. m. The European nations appear to be as much behind our most advanced states in the protection of working children, as they are ahead of the great majority of our states in protecting women against night work in manufacture. We have much to learn and much to teach through the International Association."

MR. LINDSAY.

Professor S. M. Lindsay discussed the subject of coöperation in labor legislation, pointing out the great importance of avoiding duplication and encouraging coöperative action. Among the organizations with which coöperation should be promoted are the Bureaus of Labor, Departments of Factory Inspection, Trade Unions, American Federation of Labor, Child Labor Committees, Consumers' Leagues, Christian Social Unions, and Church Departments of Labor. In his judgment a more close-knit organization should perhaps be formed instead

of state branches, and local committees might be appointed in each legislative area. The members of these committees should have direct membership in the Association. The local secretary would, by correspondence, keep in close touch with the general organizing secretary, and would furnish all necessary information, copies of laws, bills, local enactments, etc. This plan had worked well with the National Conference of Charities and Corrections, and might be a better method of strengthening the American Association for Labor Legislation.

BUSINESS MEETING OF THE ASSOCIATION.

The report of the Secretary for the year 1908 was read and will be found in the second part of this annual report. An auditing committee was named by the President, consisting of Professor S. W. Gilman and Professor W. A. Scott, of Madison, Wisconsin. Their statement is incorporated with the report of the Secretary.

Upon the recommendation of the General Administrative Council it was voted to amend Article IV of the Constitution, substituting the word *seventy-five* for *fifty*, thereby increasing the maximum number of the members of the General Administrative Council.

The Association voted that the United States Government through the Bureau of Labor be requested to increase its contribution to the International Association from the present amount of \$200 to \$1,000.

The following officers were elected for the year 1909:

President—HENRY W. FARNAM, Yale University.

Secretary—JOHN R. COMMONS, University of Wisconsin.

Treasurer—LUCIEN S. HANKS, State Bank, Madison, Wis.

Vice-Presidents:

Jane Addams, Hull House, Chicago.

Robert W. de Forest, New York City.

Samuel Gompers, Washington, D. C.

J. W. Jenks, Ithaca, N. Y.

Samuel McCune Lindsay, New York City.

Warren S. Stone, Cleveland.

Towner K. Webster, Chicago.

MEETINGS OF THE GENERAL ADMINISTRATIVE COUNCIL.

The General Administrative Council held two sessions, in which the following business was transacted.

The Executive Committee was elected as follows :

Richard T. Ely,	Henry R. Seager,
John Mitchell,	Ernst Freund,
Charles P. Neill,	President and Secretary <i>ex-officio</i> .

The Local Executive Council of Madison was re-elected as follows :

Richard T. Ely, Chairman, University of Wisconsin.
James D. Beck, Commissioner of Labor.
Charles McCarthy, Legislative Reference Library.
Max O. Lorenz, Deputy Commissioner of Labor.
T. S. Adams, University of Wisconsin.

Members of the Committee of the International Association were elected as follows :

Jane Addams,	Henry W. Farnam,
Felix Adler,	Ernst Freund,
John Graham Brooks,	John Mitchell,
John R. Commons,	Charles P. Neill
Richard T. Ely,	Henry R. Seager.

The following motions were moved and seconded, and carried by the council :

That the Executive Committee be advised that there should be two meetings each year of the General Administrative Council, one near Easter and the other at the time and place of meeting of the Commissioners on Uniform Laws and the American Bar Association.

That the Executive Committee be authorized to engage

a salaried secretary at such time as funds may be provided, the title and compensation to be determined by the Executive Committee.

That the Executive Committee be authorized to complete the list of members of the General Administrative Council to the number of seventy-five.

That the place and date of meeting, December, 1909, be referred to the Executive Committee, with power to decide after conference with the officers of the American Economic Association, American Sociological Society, and the American Statistical Association.

II.

SECRETARY'S REPORT FOR 1908.

The active work of the Association for this year began with March first. At that time, the equipment and records of the Association had been received from New York City, and the Assistant Secretary entered upon her official duties.

In accordance with the amendment to the constitution made at the First Annual Meeting, the General Administrative Council was enlarged from twenty-five to fifty members.

An outline of work and plan of organization for the Association was discussed by the Local Executive Council and the Secretary. A program was finally drawn up and published in leaflet form. It was decided to bring the work of the Association under three heads: (1) the collection, classification, and cataloging of data and material; (2) the direction of investigations bearing on labor legislation and on judicial decisions relating to labor and industrial conditions; (3) mediums of publicity.

(1) *Collection and Classification of Material.*

The libraries of the University of Wisconsin, the State

Historical Society, the Wisconsin Legislative Reference Library, and the labor material collected by the American Bureau of Industrial Research, have made it unnecessary for the Association to spend much time in collecting material. The Wisconsin Legislative Reference Library has carried on a systematic collection and classification of the laws of all states and foreign countries bearing on labor and industrial conditions; of the briefs of attorneys and decisions of the courts, with critical opinions on the same; and a bibliographical index of books, periodicals and records of investigations. Besides this the Association has collected special material on subjects relating to labor. We have begun the collection of the blank forms and statistical cards used by bureaus of labor in the United States and by labor offices of foreign countries. By a comparative study of these forms, we shall be able to suggest improved methods of gathering information, and to establish greater uniformity in reports. A good deal of material on the operation of factory inspection laws has been collected. The records of injunction cases and opinions thereon have been sent to us by trade unions and other associations. With the coöperation of the Wisconsin Bureau of Labor, certain cuts, models, and descriptions of protective machinery devices have been secured. These are being arranged and classified under the direction of the engineering school of the University of Wisconsin, with the expectation of publishing a guide or handbook on protective devices.

(2) Research Work.

The research work of the Association has been carried on through volunteer work and the coöperation of the Wisconsin Legislative Reference Library and the Wisconsin Bureau of Labor and Industrial Statistics.

(a) Research work suggested by the International Labor Office.

At the Fourth Delegates' meeting of the International Association for Labor Legislation, held at Berne, Switzerland, September 27-29, 1906, the following subjects were recommended to the different sections for investigation and report: (1) the employment of women and children; (2) administration of labor laws; (3) night work of young persons; (4) legal maximum working day; (5) home work; (6) workmen's insurance; (7) industrial poisons.

The first topic (employment of women and children) is now being investigated by the United States Bureau of Labor, and a full report is expected soon, hence it was considered unnecessary for our Section to take up that subject. The secretary has, however, directed an analytical compilation of the existing child labor laws in the United States. This was completed for sixteen states, and the report forwarded to the Fifth Delegates' meeting held at Luzerne, September 26-29, 1908. The analysis for the remaining states will be completed during this university year.

On the second topic (the administration of labor laws) we have endeavored to get as full a report as possible. The administration of the factory inspection laws for nine states was studied and a report made to the Fifth Delegates' Meeting. This study is being continued, and it is hoped to complete the report for the remaining states by the end of the university year.

On the third subject (the night work of young persons) nothing has yet been done. Just how far this question will be included in the government report on the employment of women and children is not yet known.

The secretary considers the fourth subject (the legal

maximum working day) one of great importance. The need of an investigation of maximum working hours in the United States is most pressing and such an investigation during the coming year would be one of the most valuable that the Section could undertake.

So far, no active work has been done on the fifth subject (home work). Home work industries engaged in export trade are not of sufficient importance in the United States to warrant the time and expense of our investigations.

While no active work has been done on the sixth (workmen's insurance), it is evident that this is one of the most important questions to which the Association should direct its attention.

During the year considerable attention has been given to the seventh subject (industrial diseases and poisons). The aim has been to promote an investigation in the United States which would result in legislation somewhat similar to the disease provisions in the British Workmen's Compensation Act. The investigation would include reports on methods of prevention as well as means of compensation. Early in the year the Secretary made an extensive trip through the eastern states to consult with leading men on the subject of the nomenclature of diseases and occupations. This was considered the preparatory step toward an investigation of industrial hygiene. Conferences were held with several medical men, among whom were Dr. H. B. Favill, of Chicago, Mrs. M. P. Ravenel, C. R. Bardeen, and Joseph Erlanger, of Madison, and with Mr. John M. Glenn of the Russell Sage Foundation and Mr. Charles P. Neill, United States Commissioner of Labor. A provisional Commission on Industrial Hygiene affiliated with the American Association for Labor Legislation has been formed, as follows:

Chairman, Dr. H. B. Favill, Chicago.

Secretary, Dr. M. P. Ravenel, Madison.

Treasurer, Wm. A. Scott, Madison.

Other members: Richard T. Ely, C. R. Bardeen, John R. Commons.

(b) Research work, planned by American Section.

In addition to the subjects suggested for investigation by the International Labor Office, the secretary has been able to secure the preparation of a comparative statement of laws of American states on the subject of a weekly day of rest. This will enable the states to determine their relative standing on this vital question and to compare their backward position with the humane position taken by European countries.

Besides the coöperation between the Association and official bodies in Wisconsin, one other state has called upon the American Association for active assistance. The governor of the State of Illinois has appointed a Commission on the Safety, Health, and Comfort of Employees. The Commission will prepare a bill for the next session of the legislature, and has asked the American Association for Labor Legislation to make an investigation of laws, both foreign and domestic, on the protection of employees, which will show the relative standing of Illinois as compared with other American states and as compared with the different European countries. In preparing this report the secretary wishes again to acknowledge the splendid coöperation of the Wisconsin Legislative Reference Department. The expense of the investigation is borne equally by the Chicago Manufacturers' Association and the Illinois State Federation of Labor.

SUMMARY OF WORK IN PROGRESS.

- (1) Analysis of Child Labor Laws.
- (2) Analysis of Factory Inspection Laws.

(3) Appointment of Commission to advise and conduct investigations on Industrial Hygiene.

(4) Comparative analysis of laws on one day's rest in seven.

(5) Comparative analysis of laws on Safety, Comfort and Health of Employees.

(6) Classification of material on protective machinery devices.

(3) *Publicity.*

The official publication of the Association is the *Bulletin of the International Labor Office*. This Bulletin is compiled at Basel, Switzerland, the headquarters of the International Association. The English edition of the Bulletin was begun in May, 1907. It is a translation of the German Bulletin, and the first volume corresponds to the German Bulletin for 1906. The English Section did not attempt the translations of the numbers issued before 1906. The expense of this translation has been divided between the International Labor Office and the British and American Sections. The International Labor Office has contributed \$800 a year up to the present time, but since the cost above that amount is beyond what the British and American Sections have been able to meet, the grant has been increased by an agreement to pay any deficit each year up to \$400. The increased grant from the International Labor Office also makes it possible for the British Section to issue the Bulletins more regularly. Hereafter one volume will be gotten out each year, in quarterly issues. During 1908, the last part of Vol. I, Nos. 9-12, and the first quarterly number of Vol. II, have been mailed to subscribers.

In addition to the *Bulletin of the International Labor Office*, it was thought advisable to arrange for a means of

publication that will bring the Association more directly in contact with its members and the American public. For this purpose the editors of *Charities and the Commons* offered a department in their magazine, to be conducted by the secretary of the American Association. This proposition was submitted to the officers of the Association for their approval, and a favorable vote was returned. Various articles for the Association have been written from time to time and a special department devoted to subjects bearing on labor legislation, appeared this month.

While none of the research work is yet ready for publication, the Association has mailed to its members several monographs and bulletins relating to the subject of labor legislation. The brief by Mr. Louis Brandeis in the case of *Muller vs. State of Oregon*—the ten hour law for women—was mailed to our members and to a large list of names. This was done for the Association through the coöperation of the Russell Sage Foundation.

Copies of the First Annual Report, containing papers by Professors Ely, Henderson, Seager, and Urdahl, have been sent to members of the Association and to a list of about 1,300 names. Through the courtesy of the Wisconsin Bureau of Labor, our members have received the report on Industrial Accidents and Employers' Liability in Wisconsin, by Dr. Max O. Lorenz, as well as the paper on Industrial Hygiene and the Police Power, by Dr. H. B. Favill, of Chicago. Reports of investigations that have been made by the other Sections, especially those translated into English, and the reports of the Fourth and Fifth Delegates' Meeting of the International Association, have been distributed as far as possible among subscribers. Many of these have also been sent out with circular letters, to prospective members.

(4) *Membership.*

The present membership numbers:

Paid up members	271
Members in arrears.....	57
Total.....	328
Number of \$1.00 members	54
“ “ members subscribing to Charities and The Commons	9
“ “ “ “ International Bulletin.....	179
“ “ “ “ Both	29
“ “ unpaid subscribers to the Bulletin	57
Total	328

Special circular letters have been sent to members in arrears, members not subscribers to the Bulletin, to trade unions, and State Federations of Labor, to state libraries, to the editors of labor papers, to legislators elected for the coming sessions, and to other groups of individuals having similar interests. The total number of these special circular letters is about 385. These, together with the general letters first mailed, make a total of about 1,685.

(5) *State Sections.*

At the First Annual Meeting of the Association, December 1907, an amendment to the constitution was proposed and adopted, permitting the formation of local sections or state branches of the American Section. This amendment was incorporated into the constitution as Article 5. By its authority, a state branch was organized in Illinois on November 7, 1908. Any members of the American Section residing in Illinois become members of the state branch by a vote of its executive committee. Professor Ernst Freund, of the University of Chicago, was elected President; and Mr. Luke Grant, of the Chicago *Record-Herald*, was made secretary. The executive committee consists of the president and secretary, and Miss

Jane Addams, Professor Charles R. Henderson and a third member to be chosen by them.

JOHN R. COMMONS,
Secretary.

CASH RECEIPTS AND DISBURSEMENTS,
JANUARY 1, 1908 TO JANUARY 1, 1909.

Cash received		Cash paid out	
Balance from 1907....	\$ 168.81	Printing and Stationery..	\$ 133.10
By subscriptions 1908..	878.07	Charities and the Com-	
By contributions 1908..		mons.....	64.00
By Henry W. Farnam	610.00	Stenographer.....	55.05
By A. A. L. L.....	156.00	Organization expense,	
Refund from Illinois		Chicago, Nov. 7, 1908	
Section Nov. 7.....	13.10	(refunded).....	13.10
Refund from New York		Work for Illinois Com-	
(Charities Leaflets)..	9.15	mittee on Protection of	
		Employes (to be re-	
		funded).....	97.20
		Refund on overcharge..	6.00
		First Annual Report...	232.50
		Express, postage, etc.	
		First Annual Report..	67.15
		Bulletin of Internation-	
		al Labor Office	50.01
		General	95.98
		Dues to International	
		Labor Office	200.00
		Expense of English Bul-	
		letin	120.68
		Total paid out.....	1,134.77
		Balance on hand.....	700.36
Total	\$1,835.13	Total	\$1,835.13

(Audited) WM. A. SCOTT,
STEPHEN W. GILMAN,
Auditing Committee.

CONSTITUTION.

AMERICAN ASSOCIATION FOR LABOR LEGISLATION.

Adopted Feb. 15, 1906.

Amended Dec. 30, 1907.

Amended Dec. 30, 1908.

At the Second Annual Meeting the Constitution was amended to read as follows :

ARTICLE I. NAME.

This Society shall be known as the American Association for Labor Legislation.

ARTICLE II. OBJECTS.

The aims of this Association shall be :

1. To serve as the American branch of the International Association for Labor Legislation, the aims of which are stated in the appended Article of its Statutes.
2. To promote the uniformity of labor legislation in the United States.
3. To encourage the study of labor legislation.

ARTICLE III. MEMBERSHIP.

Members of the Association shall be elected by the Local Executive Council. Eligible to membership are individuals, societies and institutions that adhere to its aims and pay the necessary subscriptions. The minimum annual fee for individuals shall be one dollar, or three dollars if the member wishes to receive the Bulletin of the International Association. The minimum annual fee for societies and institutions shall be five dollars, and they shall receive one copy of the Bulletin, and for each two-dollar subscription an additional copy.

ARTICLE IV. OFFICERS.

The officers of the Association shall be a president, ten vice-presidents, a secretary and a treasurer. There shall be also a General Administrative Council consisting of the officers and not less than twenty-five or more than seventy-five other persons. The General Administrative Council shall have power to fill vacancies in its own ranks and in the list of officers; to appoint an Executive Committee from among its own members and such other committees as it shall

deem wise; to appoint a Local Executive Council of five members to cooperate with the secretary; to frame by-laws not inconsistent with this constitution; to choose the delegates of the Association to the Committee of the International Association; to conduct the business and direct the expenditures of the Association. It shall meet at least twice a year and on each occasion shall determine the date of the succeeding meeting. Eight members shall constitute a quorum.

ARTICLE V. LOCAL SECTIONS.

Local Sections of this Association may be constituted in any city or state upon certification by the secretary and the Local Executive Council. They shall be governed by the following by-laws:

SECTION 1. The name of this Association is the _____
Section of the American Association for Labor Legislation.

SEC. 2. Eligible to membership are members of the American Association for Labor Legislation residing in _____. Members of the American Association for Labor Legislation become members of this local by vote of the Executive Committee of this local section.

SEC. 3. The purpose of this section is to promote the work of the American Association for Labor Legislation in general, also in special relation to the needs of the state of _____.

SEC. 4. Expenses of this section shall be met by voluntary contributions of members and others.

SEC. 5. The officers of this section shall be a president and a secretary-treasurer, who, with three other members, shall constitute the Executive Committee.

SEC. 6. The Executive Committee shall administer the affairs of the section and report at annual or called meetings of members of the section. It shall be the duty of the Executive Committee to arrange programs for discussion of members, to institute and direct investigations, to take measures to increase the membership of the American Association for Labor Legislation, to promote publicity of the policies and recommendations of the American Association for Labor Legislation by publications and meetings.

SEC. 7. An annual meeting of the section for election of officers and for other business shall be held in October of each year.

SEC. 8. These by-laws may be amended at any annual or called meeting of the section, notice of the proposed amendment having been sent to each member at least one month in advance.

ARTICLE VI. MEETINGS.

The annual meeting and other general meetings of members shall be called by the general administrative council and notice therefor shall be sent to members at least three weeks in advance. Societies

and institutions shall be represented by two delegates each. The annual meeting shall elect the officers and other members of the general administrative council.

Amendments to the constitution after receiving the approval of the general administrative council may be adopted at any general meeting. Fifteen members shall constitute a quorum.

**ARTICLE II OF THE STATUTES OF THE INTERNATIONAL ASSOCIATION FOR
LABOR LEGISLATION DEFINING THE AIMS OF THE ASSOCIATION.**

1. To serve as a bond of union to those who, in the different industrial countries believe in the necessity of protective labor legislation.

2. To organize an International Labor Office, the mission of which will be to publish in French, German and English a periodical collection of labor laws in all countries, or to lend its support to a publication of that kind. This collection will contain:

- (A) The text or the contents of all laws, regulations, and ordinances in force relating to the protection of workmen in general, and notably to the labor of children and women, to the limitation of the hours of labor of male and adult workmen, to Sunday rest, to periodic pauses, to the dangerous trades;
- (B) An historical exposition relating to those laws and regulations;
- (C) The gist of reports and official documents concerning the interpretation and execution of these laws and ordinances.

3. To facilitate the study of labor legislation in different countries, and in particular, to furnish to the members of the Association information on the laws in force, and on their application in different states.

4. To promote by the preparation of memoranda or otherwise, the study of the question how an agreement of the different labor codes, and by which methods international statistics of labor may be secured.

5. To call meetings of international congresses of labor legislation.

IN MEMORIAM.

Since the publication of our last annual report three members of our General Administrative Council have died.

Mr. Samuel Moffett died on August 1, 1908, at his home in Mt. Vernon, N. Y., at the age of forty-eight years. Mr. Moffett was on the editorial staff of *Collier's Weekly* from 1904 to the time of his death. In his earlier years he was connected with various papers on the Pacific Coast; was managing editor of the *Cosmopolitan Magazine*, and an editorial writer on the *New York World*. He was the author of several books dealing with the tariff and currency questions.

On January 1, 1909, Mr. Herman Justi died at his home in Chicago. Mr. Justi was the organizer of the coal operators of Illinois. He had a profound faith in the virtue of good will, of fair dealing and in the efficacy of friendly discussion. He recognized the importance of the human factor and the example of his life will exert an influence far beyond the sphere of his activity. Many pamphlets on arbitration, conciliation, trade agreements, and on the organization of capital, indicate his constant activity and interest in the problem of the adjustment of labor and capital. By Mr. Justi's death the cause of industrial peace has lost an earnest and energetic worker.

Mr. Carroll D. Wright died on February 20, 1909, at the age of 69 years. Of the many important positions filled by Mr. Wright none stands out so clearly as his

work in connection with labor statistics. Massachusetts was the first government in the world to establish a Bureau of Statistics of Labor, and Mr. Carroll D. Wright was its second director, holding the office for fifteen years. He was the first director of the United States Bureau of Labor, a position which he held for twelve years. He had charge of the federal census of Massachusetts in 1880 and was a director of the eleventh census of the United States. In 1903 he was president of the American Association for the Advancement of Science. At the time of his death he was president of Clark College, director of the Department of Economics and Sociology and trustee of the Carnegie Institution of Washington.

III.

PROGRAM OF THE SECOND ANNUAL MEETING.

The program as previously arranged was carried out with but slight variation.

PAPERS.

TUESDAY, DECEMBER 29.

- 10 A. M. Joint meeting with the American Economic Association.
1. President's address by PROF. H. W. FARNAM.
 2. Employers' Liability.
Papers by DR. M. O. LORENZ, University of Wisconsin; MISS CRYSTAL EASTMAN, of the Pittsburgh Survey; DR. C. P. NEILL, Commissioner of Labor, Washington.
 3. Canadian Industrial Disputes Act.
Papers by PROF. ADAM SHORTT, Civil Service Commission of Ottawa. Discussion to be opened by DR. VICTOR S. CLARK, Bureau of Labor, Washington.
- 2 P. M. Meeting of the Executive Committee.
3 P. M. Meeting of the General Administrative Council.

WEDNESDAY, DECEMBER 30.

Short papers, not over twenty minutes in length, to be followed by an informal discussion.

- 9.30 A. M. 1. Report of the biennial meeting of the International Association for Labor Legislation in Luzern, by C. H. VERRILL, of the Bureau of Labor, Washington, and MRS. FLORENCE KELLEY, Secretary of the National Consumers' League.
2. Relations of the American Association to the International Association for Labor Legislation, by PROF. H. W. FARNAM, of Yale University.
 3. The Work of the Association, by DR. CHARLES P. NEILL, Commissioner of Labor, Washington.
 4. The Formation of State Branches, by PROF. JOHN R. COMMONS, of the University of Wisconsin.
 5. Coöperation in Labor Legislation, by PROF. S. M. LINDSAY, of Columbia University.
- 2.30 P. M. Reports of the Secretary and Local Advisory Council.
Election of Officers.
General Business.

SOME FUNDAMENTAL DISTINCTIONS IN LABOR LEGISLATION.

H. W. FARNAM.

In the scholarly presidential address, which he delivered a year ago at the first annual meeting of this association, Professor Ely dealt with the relations of labor legislation to economic theory. He showed that most of the early economists were on principle opposed to legislation which seemed to them to be a futile interference with economic laws, but that their successors gradually changed their views, until at the present day there are very few who would condemn labor legislation as such. If, however, we no longer hold that all labor legislation is unscientific and futile, neither do we believe that all that goes under that title is scientific and effective. Still less do we believe that everything that is demanded in the name of labor is going to accomplish what is expected of it, even when we approve of its general aim. And while the doctrine of *laissez faire* no longer ranks as an infallible principle of state-craft, it may still serve the useful purpose of the slave who stood behind the triumphant Roman general to remind him that he was still a man. We, too, need occasionally to be reminded that, though legislation has accomplished much, it has also frequently failed; that it is very apt, even when successful, to produce unexpected results; and that we cannot be too careful to study with all of the statistical and administrative material at our disposal the complex operation of past laws before advocating new ones. We prefer to let evils work their own

cure, if they can, and we must always balance the "ills we have" against those "we know not of." We have thus reached the point at which the emphasis should be laid, not on negation, nor on agitation, but rather on discrimination.

The general term labor legislation embraces at the present day a heterogeneous mass of enactments which impinge upon the individual in very different ways, and which really fall into three quite distinct classes, if we group them with reference to their immediate bearing on economic processes.

In the first class, which is also the oldest, we have what is commonly termed labor protective legislation. Familiar types are laws limiting the age of employment of children, limiting the hours of employment, prohibiting certain kinds of employment to women or children, requiring the use of safety appliances in connection with machinery, limiting migration, etc. They determine the conditions under which labor must be performed, but do not directly affect the terms of exchange. They operate like dykes, which confine a river to a certain bed but do not change the flow or general course of the water.

In the second class we have legislation which aims not so much at excluding certain unfavorable conditions of labor as at the direct bestowal of pecuniary benefits. This legislation may not inappropriately be called distributive or positive legislation. Compulsory insurance laws which require the employer or the state to contribute a part of the funds would come under this head, as well as employers' liability laws, old age pension laws, laws providing for the fixing of wages by wage boards or compulsory arbitration, etc. These laws require certain positive contributions on the part of the public, the employer, or the wage receiver, or of several of them combined. They

directly affect the terms of exchange by supplementing or modifying the wage contract.

In the third class we have legislation which is designed to encourage or promote certain institutions, but which neither contains a prohibition nor an injunction, and may therefore be called permissive. Most of these laws in their application to labor involve the use of certain forms of self help. In this group we should include, therefore, laws permitting and regulating labor organizations, benefit societies, coöperative associations, voluntary arbitration boards, joint boards for collective bargaining, etc.

The attitude of the law-giver towards the citizen in these three classes may be tersely expressed as follows: laws of the first class are mainly prohibitive and say "thou shalt not;" laws of the second class are mainly mandatory and say "thou shalt;" laws of the third class are mainly permissive and say "thou mayest."

It would carry us too far to attempt any statistical study of the way in which the laws of these three classes have operated in practice, but their influence upon economic forces may be explained by an analogy drawn from another and less debatable department of economics. While on many topics economists are still at variance, the experience of the world in dealing with money has been so long, and it has been the subject of such careful study, that, in spite of differences of opinion regarding certain points of monetary policy, there is a pretty general agreement regarding the laws of monetary circulation. One of the most important aims of all monetary legislation is to establish a definite standard of value. For centuries the world's standards were steadily deteriorating. For many years after Sir Thomas Gresham had formulated his famous law, according to which bad money drives out good money, no means had been discovered of coun-

teracting what seemed to be an inevitable law of monetary degeneracy. Just as soon as one metal depreciated in value, just as soon as the government issued coins of light weight, or dishonest people sweated or clipped the coins, the inferior coins tended to remain in circulation, while the better ones were melted down or hoarded. The competition of those who had money to sell,—that is, who wished to buy goods,—took the form of offering the poorest money that the other party to the bargain could be induced to accept. Gresham's law was, however, not an inevitable law of nature. Like all economic laws it expressed a tendency; therefore, it expressed what will happen under conditions favorable to that tendency. It did not say that the tendency could not be neutralized by changing the conditions. And as soon as the government decreed that coins below a certain weight and fineness should not be received as legal tender, and provided for the retirement of light coins, the profit on using cheap money disappeared. The question was no longer, how bad a coin can be palmed off for a certain kind of merchandise, but how much merchandise shall be given for a standard coin.

Now there is a close analogy between the condition of things in the world of money down to the end of the eighteenth century, and in the world of labor during a good part of the nineteenth. In the wholesale and impersonal demand for labor which grew up with the factory system there was a natural tendency to employ those who would work for the longest hours and at the lowest wages. The result of employing this cheap labor was in the end to also make labor less efficient, and therefore worth less to the employer. It was practically impossible for the individual to fight against this tendency. An employer who deliberately paid higher wages in the

expectation of getting more efficient labor was in the position of a person who should endeavor to raise the standard of the coinage by always paying out the best instead of the poorest coins that passed through his hands. He would have his trouble for his pains, and others would reap the benefit of his liberality. When the laws were passed against child labor, limiting the hours of employment, limiting the age of employment, etc., and enforcing them by inspection, a new standard was created. The buying and selling of labor did not cease. The demand and supply acted as before. But the conditions under which they acted were changed. A child of ten years was no longer legal tender in the labor market. A day of thirteen hours was no longer a legal standard of time wages. The government did for labor what it had done for money, by providing that certain kinds of service should be as illegal as certain kinds of money were. The intervention of the state established a standard, changed the conditions of competition, and made it impossible for the employer to employ labor below a certain grade.

Labor laws of the second class, which I have designated as "distributive", also have their analogy in monetary legislation. Just as the monetary standard has sometimes been changed in order to benefit a certain class, especially to bring about a redistribution of wealth between debtor and creditor, so most of these laws endeavor to bring about a redistribution of wealth either between employer and employed, or between present and future income. If the government, for instance, issues paper money which is worth only ninety per cent of its face value, the debtor gains a hundred dollars on every transaction of a thousand dollars. Just so a law providing for compulsory insurance at the expense of the employer vir-

tually says: whenever you owe \$1 in wages you are obliged to pay not merely the \$1 stipulated, but \$1 plus a certain percentage needed to pay for the cost of insurance. Now while changes in the value of money which are brought about by unforeseen variations in the value of the metal may produce beneficial effects, history has taught us the danger of changes which are made deliberately with the intention of helping one class at the expense of another, and the history of labor legislation likewise shows that such a danger is inherent in all legislation of this kind. The danger is not great enough in all cases to condemn it. But there is always a risk of demoralizing the class supposed to be benefited in any law which produces a gratuitous distribution of property, unless carefully guarded against abuse. This danger is seen in the inheritance of millions by an irresponsible heir, in the marrying of millions by a conscienceless fortune hunter, in the subsidizing of industry by a protective tariff, no less than in lavish poor relief and in the transfer of wealth by law to the working middle class. All such laws are exposed to a danger not found in laws of the first class, which involve primarily a restriction rather than a privilege.

Labor laws of the third class also find their analogy in monetary legislation. Laws providing for the chartering of banks are here the counterpart of laws providing for the organization of trade unions, coöperative societies, and voluntary arbitration boards. A national banking law does not necessarily create national banks. National banks exist only if there are enterprising capitalists who desire to organize themselves under the law. For the same reason a law permitting the existence of trade unions does not necessarily lead to their formation. No unions will be formed, unless there are people who can command

the intelligent leadership and interest needed to organize them. The form, too, which they take will depend upon the national character, the economic and social habits, the prejudices, and even theories of those concerned. Hence we see that labor unions have taken one form in England, but quite different forms in Germany, and still different forms in France.


In distinguishing these three types I do not mean to assert that they are always kept perfectly distinct in practice. Labor legislation sometimes progresses in the accomplishment of a certain end from one type to the other. The small success of voluntary schemes for workingmen's insurance led the German government to introduce compulsory insurance, thus passing from laws of the third type to those of the second. As regards savings, this matter is still regulated by laws of the third type in general, but some economists are now advocating compulsory saving as a kind of insurance against unemployment. Likewise the limited success of voluntary arbitration boards has led in Australasia to compulsory arbitration. In still other cases two methods may be combined in a single law. Thus in the Ghent system of insurance against unemployment, there is a coercive or distributive feature in that the town pays out of the proceeds of taxation a certain sum towards the allowance of those who are out of work, but it pays this in most cases as a bonus added to the allowance made by labor organizations. It thus makes use of the methods of the second class to encourage institutions of the third.

The classification of labor laws just made is not only vital when we are considering the practicability of proposed measures; it also has an important bearing upon the work of this Association. The French and German names of the International Association indicate that it

was formed to deal only with such legislation as was placed by me in the first class, and the terms *Arbeiterschutzgesetzgebung* and *La Protection Légale des Travailleurs* are synonymous. The adjective "protective", perhaps for the sake of euphony, perhaps for the sake of brevity, has been left out of the title as translated into English. But the limitation of scope still applies to the International Association, and the reason for it is simple. There already exists an international association for workingmen's insurance, which is the principal aim of legislation of the second class. There is likewise a coöperative congress which deals with what is probably the most wide-spread form of self-help among the laboring class, while the trade unions are many of them on an international basis and provide for an interchange of views in matters relating to their interests. The International Association, therefore, would be entering upon fields which are already preëmpted, if it were to deal with these other subjects. This does not necessarily limit the scope of the American Association, which can take up any subjects that it desires. But it does indicate its primary purpose.

We have thus far distinguished between different types of legislation with reference to the way in which it operates upon the economic processes. If we now look at the general purpose and trend of such legislation, we shall see that there are two main purposes which are not necessarily antagonistic, but which are yet distinct. The first purpose, which applies to all of the so-called labor protective laws and many of those which fall in the other two classes, is the preservation of the race and the maintenance of its quality. The principal argument for protecting children and women against excessive or unhealthy work is that the next generation is threatened.

The first child labor laws of Prussia were inspired by General von Horn, who, in 1828, called the king's attention to the difficulty of getting able-bodied recruits from the Rhine province. This same purpose applies to many other types of legislation. One of the strongest arguments for workingmen's insurance is that the burden which falls upon women and children in the case of industrial accidents or disease is lightened, and that thus the succeeding generation is brought up under more wholesome conditions. Quite a different purpose appears when legislation aims to influence the distribution of wealth between different classes, when it consciously tries to raise the level of the wage-receiving class at the expense of the employers or of the community at large. These two tendencies, which are really quite distinct, are often confused. Many people, especially those of the individualistic school, are apt to group all labor legislation together as socialistic; and in many cases the very epithet, in the mind of those who use it, is enough to condemn the movement. This, however, is a superficial view. Socialism is not the only antithesis to individualism. If the extreme individualist is one who believes in the greatest liberty of the individual, he may be restrained either in the interest of his contemporaries or in the interest of his successors. The motto of the individualist who disregards the interests of his contemporaries is: "The public be damned"; the motto of the individualist who disregards the interests of his successors is: "After us the deluge." Thus there are two policies opposed to individualism, one of which takes into account contemporary relations, the other of which considers the element of time. Our social world, like our physical, is a world of three dimensions, not of two. From one point of view individualism is justly contrasted with collectivism or socialism.



From the other it is contrasted with a movement which is in reality not new, but which is as yet so little conscious of itself that nobody has apparently thought of giving it a name. If we may be permitted to borrow a word which was, I believe, first coined by Mr. Louis R. Ehrich, we may call it "posteritism." This movement is so important for the welfare and the permanent strength of any society, and it is capable of so many applications, that it almost implies a revolution in our social ideals. The general care for the life, intelligence, and morals of the next generation, as shown in labor laws, in the steps taken for the preservation of the national health, in the fight against tuberculosis, and in the creation of playgrounds for children, is but part of a greater movement which also includes measures for preserving our forests and our mineral resources, for draining our swamps and for irrigating our deserts. Still another phase of it is seen in the study of eugenics by our sociologists. It is not difficult to interest people in the preservation of our natural resources, but those who are far-seeing recognize that the people who inhabit a country are as much an asset as is its material wealth. Indeed, one without the other would be of little use. The labor legislation for which this association primarily stands forms, therefore, a part, but a very important part, of the general movement for posteritism.

Much that we advocate is not new. England, the states of continental Europe, and many of our own states furnish us with an abundant experience on which to base future action. And yet the matter is attended, in the United States, with peculiar difficulties which are partly legal and institutional, partly economic.

The legal difficulties arise from the very framework of our government. We have within the limits of the

United States, excluding Alaska and our distant dependencies, no less than fifty-one different legislative bodies which have the power to pass laws for a larger or smaller territory. Our country presents a more complex legislative problem than all the states of Europe taken together. There is, it is true, no lack of labor legislation in the United States. During the year 1907 alone no less than 405 measures regarding labor were passed, and all of the legislatures were not working that year.¹ But though many of our states are far advanced and stand on a par with the best states of Europe with regard to certain matters, we find that even adequate laws for the protection of the labor of children are still lacking in many of the states, laws for the protection of the labor of women are often subject to attack and nullification on constitutional grounds. When we look at the administration of these laws, we are obliged to confess that in many cases they are not executed by experts, but that the poison of the spoils system still neutralizes in most of our states the good that laws might otherwise accomplish.

While in the world at large labor legislation has already passed beyond the national stage and has now become the subject of international treaties, we are still struggling with a lack of uniformity both in lawgiving and in law-enforcing within the limits of a single country. We are not even able to command satisfactory information with regard to industrial accidents or industrial diseases in order to guide future legislation. So simple a matter as the registration of vital statistics is still in such a state of chaos that Congress has been obliged to request the states to introduce registers and has ordered a model law drawn up for their guidance. If we look at the matter in all frankness we must acknowledge that, while our indus-

¹ Mass. Labor Bull., March-April, 1908, p. 69.

tries are noted throughout the world for the inventive-ness, the mechanical skill, the business talent which they command, and while we have every reason to be proud of our educational system and of our standing in international relations, we have apparently overlooked the art of legislation. The great mass of our state legislators have had no previous training in the study of lawmaking and law-enforcing. We prevent them from becoming skilled and responsible lawmakers by rotation in office, by infrequent sessions, and by constitutional limitations. The instruction which they receive from the lobby is often effective, but one-sided, since it is more apt to show them what is for their individual interest than what is for the interest of the public, present and future. There are fortunately signs of improvement. Expert commissions are being used more and more. The development of such an institution as the Legislative Reference Library in Wisconsin is doing much to educate our lawgivers. But the fact still remains that of all the industries of the United States lawmaking is perhaps the most backward.

There are also economic conditions which have made it peculiarly difficult to secure intelligent action on this subject in our country. The exhibit of the Pittsburgh Survey, which other speakers are to describe in detail at some of the other sessions of this gathering, may serve as an instructive object lesson. A visitor to that exhibit sees, as he enters the staircase hall of the Carnegie Institute, some beautiful frescoes representing the industries of Pittsburgh in their power and energy. As he ascends he sees another series of frescoes representing the "ceaseless movement of the people", men, women, and children passing on to work or play. It is true, as we are informed, that these figures are not idealized, but it is also true that the artist has shown but one side of the medal.

The assets are there, but where are the liabilities? Where is the depreciation account? If we pass into the room occupied by the Pittsburgh Survey, we see another frieze made up of small black figures, also passing in an endless procession around the room. Each one of these figures stands for one of the 622 deaths from typhoid fever which took place within a single year. Each one of them represents a loss of earning power to the families and a loss to the community, as well as suffering and weakness for those concerned. It is fair to say also that at least three-fourths of these were preventable, for some statistics placed upon the wall show that after the introduction of a filtration plant in the water supply of Pittsburgh the cases of typhoid fever were reduced by nearly three-fourths in the course of a year. Other figures show the deaths by accident, by tuberculosis, etc. Why is it that the community as a whole permitted this waste of human life to go on? It is not due to lack of engineering skill, for the highest ingenuity is displayed in the Pittsburgh mills. Nor is it due to lack of wealth, or business ability. It is mainly due to the fact that Pittsburgh, like the country as a whole, does not breed its own workers. A very large number of them are drawn from abroad. That supply keeps on coming in spite of typhoid fever and tuberculosis and the ten thousand annual deaths by accident on our railroads. A factory or a railroad must allow in its accounts for the deterioration of its machinery, or it will soon come to grief. But the United States is like a railroad company which can always obtain new locomotives by simply paying for the expense of running them. Such a company could well afford to disregard its scrap heap. But the human scrap heap is not so easily disposed of. The premature death of a worker means not simply the elimination from the industrial

world of another human machine, it often means a widow and children growing up in a state of poverty and want, it means a weak instead of a strong worker twenty years from now. Whatever the industrial structure of society may be at that time, whether capitalistic or socialistic or communistic, that means an economic loss. The action taken by us of the present generation to prevent that loss depends upon whether our social consciousness is able to project itself so far into the future as to be influenced by considerations which will perhaps never affect us personally. Socialism has emphasized the injustice of many of our social institutions. Posteritism points out our shortsightedness. If our motto is, "After us the deluge", we shall certainly take no thought for the morrow. But that was not the point of view of the founders of the Republic. For they framed the federal constitution, not only to "establish justice" but also to "secure the blessings of liberty for ourselves and our posterity."

THE AMERICAN WAY OF DISTRIBUTING INDUSTRIAL ACCIDENT LOSSES.

A CRITICISM.

MISS CRYSTAL EASTMAN.

We in America have rather suddenly grown wise about the evils of our employers' liability situation, and about the superior advantages of European systems of compensation and insurance. There is probably no one here today who would earnestly defend our way of dealing with industrial accident losses. In spite of this depressing dearth of opposition, however, I shall proceed to demolish the "American System" with considerable enthusiasm, for the sake of certain points which it seems to me important to bring out.

It is generally recognized that the reduction of the yearly loss from industrial accidents is a grave issue in national economy. We are not here, though, to discuss the reduction of that loss, but the distribution of it,—also a question of national economy. It is good private economy to make the least possible deprivation out of a loss, and it is good national economy. But nations have an advantage over individuals in adjusting their losses, for a national loss can be distributed in various ways among the individuals who make up the nation. I would criticise our present scheme for distributing the industrial accident loss, first of all, on this ground of national economy. Leaving aside for the present considerations of justice and practical operation, we may say with some confidence that the wisest national policy would be so to

distribute a loss that it would bear with the least possible hardship upon individuals. With this in mind, we turn to the actual present distribution of the loss through industrial accidents.

The bulk of it falls, in the shape of lost income, upon the injured workmen and their families, or upon the dependents of those killed. In some cases the employer shoulders a small share of this burden by making, voluntarily or under compulsion, a money compensation to the injured or his dependents. Thus out of 304 cases of men killed in industrial accidents in Allegheny County,—all of whom were contributing to the support of others, and two-thirds of whom were married,—eighty-eight of the families left received not one dollar of compensation, ninety-two families received enough to barely cover funeral expenses, sixty-two families received less than \$500. In other words, 59 per cent of these families were left to bear the entire income loss, and only 20 per cent received, in compensation for the death of an income provider, more than \$500—a sum which would approximate one year's income of the lowest paid of the workers killed.

In injury cases, we find about the same situation :

Married men	56%	received no compensation.
Single men, contributing to the support of others, 69%		received no compensation.
Single men without dependents.....	80%	received no compensation.

Looking at these figures in a different way, we find that for 259 injury cases the sum of income loss up to the date of investigation (one year or less from the time of the accident) was \$52,509. The total compensation for these cases amounted to \$12,000,—less than one-fourth of the first year's loss. The \$12,000, however, is a fixed and

settled sum, while the \$52,000 will go on increasing until all the men who have received serious permanent injuries are dead, or have reached an age at which without the injury they would have ceased to be income getters. Take, for instance, the cases of six men who were totally disabled for life: four of these men will walk on two crutches for the rest of their lives, one lost an arm and a leg, and one is paralyzed. Of these six men three received no compensation whatever, one \$365, one \$125, and one \$30. The total loss of income for these men up to the end of their lives, according to their earnings at the time of injury and the mortality tables, will amount to \$12,365. The total compensation for the six cases amounted to \$520,—in other words 4 per cent of the loss.

The total loss to the families of 193 married men who were killed, figured on the same basis (but subtracting \$300 a year to cover maintenance of the man killed), will amount to \$2,754,357. The total compensation made to these 193 families was \$72,039.

If these figures are typical, then we must conclude that the share of the loss borne by employers in the way of compensation is very small. Social workers will be quick to conclude that a great share of this burden must eventually be borne by the community through some form of charity, public or private, organized or individual. On this point the Pittsburgh study resulted in some significant and rather astonishing figures. Out of 526 workmen killed the city had the expense of burying six. Apart from this, there were, out of 825 cases studied, so far as we could discover, only seven in which any demand had been made upon organized or institutional charity; and in all of these seven the items of relief were very small. For instance, two orphan children are being cared for in an asylum and one blind old man whose son was killed

received \$1.50 a month from the county for part of a year.

The list of those aided by private individuals outside the immediate family is a little longer. Thirty-eight funerals were paid for by collections among friends, neighbors, or fellow-workmen; nineteen families received other help from such private sources. These instances range from that of a man who was boarded for nothing while he was disabled to two cases of systematic begging as a source of income. All this private, individual aid comes direct from the working people. Even the two who beg, beg from their own class. One, a widow with four children, begs at the Slavic Church door; the other begs at the mill gate on pay day.

Adding these two lists together we have, out of 825 cases studied, forty-four funerals paid for by charity and twenty-six instances of other aid from outside the immediate family.

This situation is partly explained by the fact that 149 of the men killed left dependents in Europe, and in nineteen other fatal cases the family went back to the old country soon after the funeral. In other words, 43 per cent of the fatal accidents in the Pittsburgh district leave a poverty problem not in America but in Europe. If we were discussing national morality, instead of national economy, we might pause to consider the ethics of this situation.

This statement as to the amount of relief given must be further qualified by the fact that we covered the life of the family for only about one year after the accident. This thought plunges us into the region of probability and guess work. Undoubtedly some of these families will become a burden upon the public. How great the burden we can only surmise. Statistics cannot help us

here. As a last resort, I turn to personal impression and private opinion. Judging from the pride and self-respect I found among these people, the energy and resourcefulness they exhibited in the first year's struggle, and from their generosity and family loyalty, their willingness to help each other,—I think that very few of them will ever become a burden upon American institutions of relief.

We have seen that compensation from employers covers an exceedingly small part of the loss, being in sixty per cent of the cases nothing at all. We have seen that the community, so far as the indications of this study go, bears an inconsiderable share of the loss. There are but three parties concerned, and it needs no further reasoning to show that the income loss from industrial accidents in the Pittsburgh district falls directly, almost wholly, and in all likelihood finally, upon the injured workmen and their dependents.

We were speaking of national economy. Is the policy or lack of policy which allows such a distribution of the loss to continue a policy of national economy? It might be answered: "Why not? You have shown us that few of these families become destitute, that they do not come back upon our poor boards, our institutions, our charitable societies. Does not this prove that they are equal to the burden? Why interfere?"

But, we do not maintain public schools in America because we think uneducated men will become a direct economic burden on the nation. We maintain them because we know that a nation's worth in the long run is measured by the average intelligence and ability of its individuals. We must apply the same wisdom to this problem. If the suffering of these numberless income losses means hardship and unfulfilment in individual families, then it means national deprivation. Does it mean

hardship and unfulfilment? For answer we will limit ourselves to certain figures with regard to the families of married men who were killed. We were able to follow the fortunes of 132 such families. Grown children were already working in some of these cases, and a fair family income remained even after the husband and father was killed. In a few instances a widow only was left and she was provided for by insurance. Six per cent of the widows left by the year's fatalities remarried. In such cases the loss of income meant perhaps no actual hardship. But in 59 out of the 132 cases the widow went to work,—cleaning offices, washing, taking boarders, keeping a store,—anything that came easy. Almost invariably this meant hard work, long hours, poor pay, and in most cases children neglected. It was the bitter unrewarding struggle of one person trying to do the work of two. Among these 132 families, twenty-two children were taken out of school and put to work during the year after the accident, fifteen of them being under sixteen. Here is a measurable hardship,—children deprived of the unburdened growth and education they might have had. The lives of many more children, as they grow to a working age, will be affected by the continuing absence of normal income. In nineteen cases the standard of living was lowered by a reduction in rent. One family with six children had lived in four rooms for which they paid \$12 a month; they were found one year after the husband was killed living in one room, for which they paid \$4 a month. This is an unusual case. The average reduction in rent in these nineteen cases amounted to \$5.

In thirteen cases the widow took her children and went to live with her parents. This is but a shifting of the burden within the family. It means the crowding of a large family in small quarters. It means burdening an

old man with the necessity of providing for a young family at a time when he should be letting go of things.

In thirty-five cases the immediate relatives helped in some other way, by taking a child, by giving money, etc. This too means hardship, because the aid is given not from surplus but from sacrifice. If a workingman's wife with six children saves something to give to her brother's widow left with four, it means real deprivation. If a workingman gives one-half of his earnings to a widowed sister with a family to bring up, it means sacrifice. If a young man about to set up a home of his own is obliged to keep his girl waiting because he must go back and take the place of a father killed, this is hardship, unfulfillment.

Beside these reckonable hardships there were many small intangible indications of poverty in these families. Such, for instance, is an extreme economy on food and clothes and recreation, the giving up of cherished projects, the breaking up of families, etc.

These, then, are some of the individual and family hardships that resulted from the loss of income in 132 fatal accident cases. With cases of long disability from accident we find the same situation, except that the problem is further complicated by having a sick man on hand to feed and care for,—an invalid whose recovery is delayed by the very conditions of increasing poverty and anxiety, which his injury caused, and which his recovery alone can terminate. The situation of a workingman disabled by injury and at the same time deprived of all his income is somewhat analogous to the situation of a man confined in a debtor's prison in the old days in England. They said to the debtor, "In order to get out you must pay your debts, but in order to pay your debts you must get out". We say to the disabled workmen, "In

order to recover you must have income, but in order to have income you must recover”.

It is not necessary to point out that these individual hardships are a tax upon the community's real prosperity. Repeated in thousands of families throughout the country, as they are today in America, they amount to a great negative force working away in dark places to undermine the slow-building foundations of our national welfare.

Instead of making the least of the industrial accident loss, we are making the most of it. We are allowing the bulk of it to be borne by those least able to bear it. We are distributing it so that it means the greatest possible amount of hardship to individuals. My first criticism of the “American System”, therefore, is that it makes out of what is perhaps still a necessary national loss an absolutely unnecessary amount of national deprivation.

Are there, then, any considerations of justice which make it worth while for us to hold on to this system? I think not. In the first place, our law of master and servant, even as modified by employers' liability statutes, can be proved unjust on the basis of old individualistic legal theory, as an unwarranted departure from the general law of negligence. In the second place, according to the broader ideas of social justice based upon modern industrial organization, injuries and deaths which occur in the course of work are among the costs of production, and should be reckoned and paid for out of the profits of the industry. The workman who is injured, the dependents of those killed, have lent their capital to the furtherance of an industrial enterprise; they cannot justly be left, as the result of an accident, without their capital and without anything to show for it, while the enterprise continues to make profits. The disabled workmen, the widows and orphans, are in a certain sense creditors of the industry.

We conclude, therefore, that our way of distributing these losses cannot be defended on grounds of individual or social justice.

We come to the last consideration—practical operation. Perhaps national economy and justice would be considered theoretical grounds. Here, however, we are on everyday footing. How does the system actually work? I need only mention the familiar and altogether undisputed evils of our employers' liability law in operation:

- (A) The state is put to the cost of much fruitless litigation.
- (B) The money spent by employers in fighting suits, avoiding suits, etc., amounts to quite a heavy tax, and yet results in little actual compensation paid.
- (C) Almost half of this compensation received from employers goes for the fighting necessary to get it.
- (D) The compensation, when there is any, is delayed while the need is immediate.
- (E) Lawyers on both sides are encouraged to dishonest methods.
- (F) Misunderstanding, bitterness, and distrust between employers and employees is fostered.

Out of these difficulties in the actual operation of the system have grown such institutions as employers' liability insurance, and what are generally known as relief associations. These we must consider with a view to finding out whether any true solution of the problem lies along their lines.

Liability insurance, as is well known, is not intended to insure the workmen, and does not affect the distribution of the loss so as to relieve the workman of any of his burden. If anything, it makes the position of the injured

man more insecure, because the employer, when he has paid premiums to relieve himself of legal liability, very often feels himself relieved also of moral responsibility for his injured workmen. The liability company, however, contracts to take over his legal liability only. Thus whatever feeling of moral responsibility existed is lost in the transfer.

Furthermore, under our present laws, this kind of insurance is bound to be wasteful and expensive because so many incalculable uncertainties enter into the risk. On account of the high premiums, and because it hurts their relations with their employees, I found the large employers in Pittsburgh rapidly abandoning liability insurance. Relief associations, on the other hand, are on the increase. They are of every conceivable variety. We shall not consider here those of a purely voluntary character, in which no contract relieving the employer of liability is made. Such organizations, so far as I can see, do no harm and are of very decided benefit; but they are giving place, in Pittsburgh at least, to relief associations of another type.

A relief association is primarily an organization of employees for the purpose of providing benefits in case of injury, sickness, old age, or death. We are here concerned with these organizations merely as a means of insuring against accident. Many employers have organized such associations, seeing in them a chance to accomplish certain aims of their own, while at the same time encouraging forethought and lessening distress among their employees. These aims are:

- (A) To bind the employees' interest to the company.
- (B) To weaken unionism by withdrawing employees from its benefit schemes.
- (C) To relieve themselves of legal liability by contract.

The accomplishment of these objects, I hold, is of doubtful social value.

In relief associations founded with these motives we find that membership is made a condition of employment whenever the employer is in a position of advantage in making the bargain. We find, also, that in the contract of membership there is a clause by which the member agrees that if he accepts benefits in case of injury he will relieve the employer of all legal liability in connection with the accident, and that he will sign a full release of his claims. This contract applies to the beneficiaries in case the member is killed. The compulsory character of these associations, the fact that membership is actually made a condition of employment, is the source of most of the evils inherent in them. I will briefly summarize these evils.

1. The employer is freed from the deterrent effect of the civil law, which is wholesome so far as it goes, and no tax is exacted from him sufficient to take the place of that deterrent. In the Pennsylvania Railroad Relief Association, for instance, the company pays the expenses of management and guarantees the fund, but makes no other contribution. Benefits are paid out of dues collected from members.

2. The workman is forced, as a condition of employment, to make a contract whereby he must in case of injury either lose the benefit of all the dues he has paid or give up his legal right to sue. Thus, practically, the workman gives up a future legal right by a contract in the making of which he has not actual freedom.

3. Many workmen who are not able or do not care to carry two kinds of insurance, by being compelled to join a relief association, are withdrawn from the union insur-

ance benefit schemes, which are the strongest feature of many unions.

4. Men who pay dues to a relief association upon which they have no claims for benefits after they leave a certain employment have a strong incentive to remain in that employment. Thus (a) the free movement of labor is interfered with, and (b) unions are in a second way weakened by this inducement not to strike.

In short, here are serious dangers to the real freedom of the workers, individually and collectively—a freedom which it should be our constant interest to conserve and increase.

Moreover, while a great deal of wastefulness and strife is avoided by these associations, while providence is encouraged and distress in a measure relieved, nevertheless such associations do not very greatly affect the distribution of income loss from industrial accidents. The bulk of the burden falls upon the workman just the same, whether he is encouraged to provide for it by previous small deprivations or left to meet it in his own way. But the establishment of such associations does tend to create the impression that the problem is solving itself, that the employer is voluntarily insuring his workmen, and that there is no need of legislative interference. The eyes of those concerned are blinded to the fact that national deprivation and social injustice continue to exist; thus legislative action is delayed.

So far, in respect to its practical operation, I have criticised our way of distributing industrial accident losses, on the ground (1) that it is cumbersome, wasteful, and productive of strife, and (2) that the institutions which have come into existence as a result of these difficulties of operation furnish no real solution of the problem and contain serious dangers.

What is possibly the most important consideration in the actual operation I have left to the last,—namely, its influence in preventing accidents. It is impossible to discuss compensation for industrial accidents without touching the question of preventing accidents. The bearing of one upon the other is obvious and of the greatest importance. When compulsory compensation for all accidents regardless of negligence is suggested, someone always objects that if we assure the workman compensation we shall increase his carelessness. I don't know anything about psychology, but I have an idea that this is not psychologically sound. A workingman's recklessness is not deliberate but spontaneous and impulsive, although it may become habitual. When he is careful it is not for remote reasons but because of immediate danger. It is not reasonable to suppose that a railroader who, when a coupler fails to work, is in the habit of taking his time, of signaling to the engineer, and of waiting for the cars to come together instead of going between them, would, under a different law, say to himself, "Well, I can make this thing work quickly and easily by going in between the cars. It's risky, but if I lose an arm I'll get something. If the cars come together and crush me, my wife will get three years' wages." Certainly in the presence of immediate danger the preservation of life is the strongest motive; if the fear of death does not insure caution in the workman we cannot hope to instill it by holding over him the fear of poverty. Even the knowledge that his wife and children might suffer for his death would not greatly modify his instinctive attitude.

In discouraging carelessness on the part of the employers, however, the matter of compensation—the size and sureness of the penalty they must pay for the accidents—is an important factor. The employer's careless-

ness is usually of the deliberate variety. It is involved in the construction of his plant, the selection of materials, the engaging of foremen, the making of repairs. The act or omission which constitutes his carelessness is remote in time from the risk to life and limb. Nor is it a risk to his own life and limb, but to the lives and limbs of others with whom he has no personal relation and whom he has perhaps never seen. At the time when he is careless he is in a position to consider the cost. Therefore the amount and inevitableness of the penalty put upon him is an exceedingly important factor in the prevention of those accidents which are due remotely or directly to his carelessness, indifference, or haste.

In this respect our present laws can be most severely criticised. The penalty is so rarely and unevenly imposed, the chances of escaping it are so varied and incalculable, that the civil law provides little incentive to care in the employer. I recall four inquests, each of which described the death of a man in a steel mill as the result of a heavy load of metal falling from a crane upon him. In each case the load fell because a chain broke or a hook pulled out. In one case the crane operator testified that he never knew of hooks being inspected. Two other men, employed as car cleaners by coal companies, were crushed while working underneath a car which stood on a siding. In each of these cases another car or an engine ran in on the siding without warning and bumped the car that the cleaner was under. In one case the brakeman testified that it was every man's business to look out for himself. In the other the superintendent said that he "didn't know whose duty it was to warn men underneath the cars, but he would see that some one might do it."

The cost of these six cases to the employers is significant. The men were all foreigners. One of them lived

seven days, costing the company \$7 besides his funeral expenses. In the other steel-mill cases the funeral was the only expense to the employer, amounting to about \$75 in each case. Deaths at the rate of \$75 each are not going to be a matter of serious economic concern to a present day corporation, however they may appeal to it on ethical grounds. One of the coal company cases cost the company nothing, the funeral being met by a collection among friends. The man in the other case belonged to a relief association, and by the terms of his contract the employer paid \$75 at his death.

Certainly it is not sensational or extreme to say that more attention would be given to the inspection of chains and hooks, that more care would be taken to provide adequate signal systems for men working in defenceless positions, if this sort of killing "came higher".

We have criticised the present distribution of industrial accident losses on the ground that it is poor national economy, that the basis and underlying principle of it is unjust, that in actual operation it wastes and scatters resources, that the voluntary institutions which have become part of it do more harm than good, and that it is of little use in preventing accidents.

In planning new legislation along this line, we must have constantly in mind these evils. We should therefore require of any new system which we adopt:

1. That it make compensation for injury and death from industrial accidents compulsory upon employers. Any scheme which leaves the alternative with the employer fails to recognize and correct the injustice of the present distribution.

2. That it make this compensation uniform and definite, and sufficient in amount (a) to shift a considerable

portion of the loss from the injured workman to the employer (and thus ultimately to the public), and (b) to encourage the greatest care in the employer.

3. That such compensation shall not depend upon a contract between employer and employed. For in such a contract there are dangers to the actual freedom of the workers, dangers against which the law cannot protect them.

WHAT FORM OF WORKINGMEN'S ACCIDENT INSURANCE SHOULD OUR STATES ADOPT?

M. O. LORENZ.

One year ago Prof. C. R. Henderson read a paper before the American Association for Labor Legislation in which he told of the educational endeavors of the Illinois Insurance Commission. Such has been the progress in public opinion that today we may take for granted the desirability of accident insurance and ask,—What form of law should our legislatures adopt? I shall attempt to answer that question, especially with reference to conditions in Wisconsin, not with the thought that the answer is in all respects correct, but with the hope that the discussion which follows will be focused upon certain difficult points.

In order, however, to justify the plan to be submitted, I think it may be well to summarize the arguments which may be adduced in favor of a system of accident insurance for workingmen, and without dwelling on them at length for the reason stated.

1. One of the strongest arguments is that such a system would be of great assistance in the prevention of accidents, both because of the full knowledge we should get about accidents, and because the administrative machinery of a system of insurance can do much to prevent them. Note, for example, that the rules of the accident fund of the South Metropolitan Gas Company of London give as the objects of that fund,—first, prevention, and secondly, compensation. In bold faced type, we read:

"Prevention is the chief object. 'Prevention is better than cure'. How poor a substitute for prevention is money compensation. The directors hope, with the hearty coöperation of all officers and workmen, to reduce accidents to the smallest possible number. All are requested to exercise all possible care and forethought, and to report without loss of time, any defects in plants or appliances to the foreman in charge of the work or to the engineer of the station.

"The directors thankfully acknowledge this coöperation in the past, for since this scheme was started in 1897 the proportion of accidents per 1000 subscribers to the fund has been greatly reduced, as is proved by the following figures:

1898.....	82 per 1,000	1903.....	56 per 1,000
1899.....	76 " 1,000	1904.....	50 " 1,000
1900.....	71 " 1,000	1905.....	44 " 1,000
1901.....	64 " 1,000	1906.....	37 " 1,000
1902.....	52 " 1,000		"

In this particular accident fund, the device of a jury of workmen to investigate each accident, and the grading of the workmen's contribution at each station according to the number of accidents in that station, are thought to work toward prevention.

It appears, therefore, that these two objects are not wholly distinct, and we may legitimately mention the desirability of preventing accidents as one of the strong arguments in favor of a system of compensation, even though more direct ways of prevention are also desirable.

2. The wasteful character of our system of damages for negligence is another important consideration. Take an illustration from the Wisconsin Supreme Court cases of this year. A man was severely injured for life by falling into a trench filled with hot water. The damages were \$6500, of which the sum of \$3500 was paid to his attorneys, and it is said that his expenses due to the acci-

dent are about equal to the balance. This case did not determine any important point of principle. The fact that the man was severely injured while at work was not disputed. The legal contest cannot be said to have served any good purpose. This case is typical, not of any rapacity on the part of lawyers, for such cases may require much work, but of a fault inherent in the system.

Another evidence of waste in our present system is found in the financial statements of the liability insurance companies. In 1907, according to their report to the Wisconsin Insurance Commissioner, about thirty-eight per cent of the premium was paid for losses, although this covers other forms than employers' liability insurance. In all of their business the casualty companies report commissions and dividends as being about three-fourths as much as their losses paid. These facts are not a criticism of the financial management of those companies, nor proof that they are not to some extent beneficent social institutions. The question is simply whether we cannot devise a better system.

3. The present system is unjust because there is no pretense of distributing damages according to needs or merit. The general rule in fatal or serious cases is to pay the smallest amount that will bring a release.

4. The present system undoubtedly creates ill-feeling between employers and employed. The principle of, get what you can out of the employer in case of an accident, makes each side suspicious of the other. I have in mind one workman whose hand was injured in a Milwaukee factory who said, "My employer kicks every time I come around and ask him for five dollars." Contrast this with the German system, where the employee receives from the post office his regular allowance as a matter of right.

5. To some extent industrial accidents necessitate charity. If people must be supported anyhow, it would seem better to give a definite right to a payment than to give the money in the form of a dole.

6. A system of workmen's insurance would undoubtedly relieve the courts of some vexatious litigation. The Supreme Court of Wisconsin had in 1907 about eighteen cases resulting from accidents to workmen. There would, it is true, be litigation under any system, but an insurance law undoubtedly would be more easily interpreted than the law of negligence, because the statement of facts would be subject to less dispute.

This bundle of arguments, with prevention, economy, and justice as the leading ones, is sufficient to constitute a cause for action, and we may proceed to take up specific plans of procedure; but before descending to details it may be well to consider some of the difficulties involved.

DIFFICULTIES INVOLVED.

1. We are confronted at the outset with the alternative of adopting a compulsory or a voluntary system. Some form of compulsory liability or insurance system with optional features certainly is the rule among nations that have legislated in this matter. Perhaps a distinction should be made between a compulsory and an obligatory system. An obligatory system imposes a duty to make provision in case of accident but leaves it optional how that obligation shall be met, whereas a completely compulsory system would make insurance compulsory and leave no option as to the method of insurance. This suggests the German distinction between *Versicherungszwang* and *Zwangszversicherung*.

The Illinois Commission plan is an example of a purely voluntary system. It simply says to the employer and

employees, "You may make a contract whereby the employer insures the workman and the workman agrees to give up his right of suit". We cannot point to any successful experience under such a plan. In Massachusetts the right of contracting out was given in May, 1908, but no action had been taken under the law up to December 1, 1908. Under all of the conditions, it may prove wisest to follow this plan, but it would be a confession of a weakness in our governmental system, for, in view of European experience, there can be little doubt but that we shall ultimately have a comprehensive system of workmen's insurance.

The plan which I shall submit to you makes some form of insurance practically obligatory, but leaves such options that it cannot be in any sense oppressive. An obligatory system has the advantage that it includes backward, reckless, and unintelligent employers as well as the public-spirited ones, and it includes the thriftless as well as the thrifty worker. It would give a broader basis for equalizing the shocks,—that is, with a large number of persons insured, there would probably be more regularity in the accident rate, and probably a smaller expense rate. It would help also in getting complete statistics, which is of the utmost importance for intelligent action in the future. I should be disappointed if our states adopted systems which did not permit of our having as complete statistics as are issued by the German government on this subject.

2. But what will the courts say about an obligatory system? Our courts are often represented as being opposed to progress. Perhaps there has been in the past some justification for this. The courts were under no compulsion, for example, except that of their own inclinations, to develop the fellow servant doctrine and the doctrine of

the assumption of risk, so far as these apply to dangerous industries. These doctrines give a clear illustration of legislation by the courts, and the trouble with this judicial legislation is that it has developed piece-meal, decision by decision, each step making it harder to retreat in order to make the theory square with the facts. The courts have assumed that certain things were implied in the wage contract, assumptions which were reasonable in employments not of a dangerous character, but unreasonable in modern, complicated, dangerous occupations. If the courts had been open to progressive ideas, they might have modified the law by recognizing a trade risk and the fact that an employer incurred some responsibility when he engaged in an enterprise which, assuming that degree of care which may be expected of human nature, was bound to result in so many killed and injured per 1000. They might, if they had taken account of economic facts, and had not been so much under the spell of *stare decisis*, have assumed that a "free and equal" workingman, before entering a dangerous employment, would contract with his employer that the employer was to assume part of the risks of the business.

But yet the courts have been somewhat too much criticised. They are the interpreters of our constitutions, and our constitutions may be the real barriers to progress. The courts have fully recognized that the right of private property, the right of free contract, and the right to engage in business enterprises, are not absolute, but are subject to considerations of public welfare. Show conclusively that a public evil exists, show conclusively that you have a remedy that is adequate and sensible and not too drastic, and you will find that the courts will not stand in the way unless some specific provision of the constitution is violated by your plan. The plan which I shall sub-

mit to you is a small regulation of property and of contracts, designed to be reasonable and practical, which contains nothing of class favoritism or confiscation, and which is to remove evils which in the words of an English statesman one may venture to call a great scandal. While some doubt as to the constitutionality will attach to any compulsory system, it is worth while to bring the matter squarely before our courts before accepting an unsatisfactory voluntary system.

3. There is the further difficulty of enumerating the industries to which such a system should apply. A voluntary system might avoid this difficulty, but a compulsory system cannot escape it. The English law makes short work of this perplexity by including all employments. In other countries we do find an enumeration of various industries to which the insurance system is to apply. Can a reasonable classification of industries be found according to which you can say to this class the insurance system shall apply, and to that class it shall not apply? If a man is injured in an employment where the accident rate is one per 1000, should he not receive compensation as much as if the rate in his industry were fifty per 1000? Again, if you compensate a man injured in a planing mill, why not also make your system apply to the farm hand killed by a corn shredder? This is a point of great difficulty.

It should be remembered that the problem before us now is not that of insuring workingmen against all injuries, for a good many are injured while not at work. That is a distinct problem. The idea is to cover the *extra hazard* due to their occupations, for it is this extra hazard which gives rise to the peculiar evils which we seek to remedy. It seems proper to make the basis of classification the *existence of a clear trade hazard*. We are all exposed to some risk of accident. Office workers, for ex-

ample, have their accident rate, but they have no occupational hazard for accidents. For some kinds of light manufacturing there might be practically no such special risk. It would be a matter of statistical detail to determine what occupations have such a special hazard. A satisfactory law should state clearly the principle of classification, but make the inclusion of special kinds of enterprises a matter of statistical detail. It would not be conferring legislative power on a commission if the inclusion or exclusion of an industry were made to depend on the ascertaining of a fact,—that is, whether the accident rate was more or less than the standard.

But it would be desirable to make some broad exceptions to this principle. Agricultural laborers should perhaps be excluded as being a class by themselves. There is more casual labor; more personal relations exist between employer and employed. Personal vigilance perhaps counts for more, as farming is a small scale industry. The large number of farmers would make administration difficult; and, finally, the evils constituting a cause for action have not been given prominence by cases arising out of farm accidents. Possibly it would be desirable to include the operations of dangerous forms of agricultural machinery where mechanical power is used.

4. Should the employer bear the expense alone or should the employee also contribute? I think, that under conditions existing in this country, we must decide in favor of a joint contribution. This would give both parties a financial interest in good administration. It would free the system from the charge of being a class measure, and would harmonize with the legal theory of the equality of men. Considering interstate competition, an adequate insurance might be a burden to the employer if he bore the expense alone. There is good reason to believe that

the scale of payments in the English act of 1897 could easily be borne by the employer. But that scale was hardly adequate. It did not provide for full medical aid.

5. How should the money be collected and administered? Some machinery is evidently necessary. The English method utilizes the machinery of the private liability companies. The German plan is to make employers' associations do much of the work. Both seem hardly applicable to our conditions. The waste of the private liability companies is one of the things we wish to avoid. Dividends and commissions have no place in a system of workingmen's insurance, and, on the other hand, it is questionable whether our employers would care to take the trouble to administer the German system properly, and whether we could vest employers' associations with the authority to impose fines and issue orders as the German associations do. To create private agencies and then to supervise them by an additional governmental machinery seems unnecessarily cumbersome.

The plan submitted provides for a system of direct state administration, with the option of insurance by employers' associations or other insurance agencies. A state like Wisconsin is not too large an area for one administration. The advantage lies in the simplicity and in making use of methods with which employers are already familiar. The plan does not preclude utilizing associations and committees of employers and employees to assist in the administration.

6. The prevention of malingering is an important consideration. That is not so large a problem in accident as in sick insurance, but it is something you have to fight against. A state administered fund would have in this respect to adopt the same method used by the liability companies,—the appointment of physicians and agents whom

it can trust to examine each case; but in addition to this the coöperation of employers and workmen can perhaps be enlisted by making it to their interest to reduce the number of claims by making the premium vary according to the accidents compensated in each establishment within certain limits.

7. How can damage suits be obviated? The English method does not try to do so directly but gives the workman the option to take more certain compensation, and the insurance company protects the employer in either event. But in the plan submitted the aim is to make these suits so unusual (by limiting them to cases of gross and flagrant negligence or wilful misconduct) that he need not insure himself against this contingency. To make this exemption fair from the standpoint of the workman, the employer should not, if such a suit be brought, be allowed to avail himself of the defense of contributory negligence except in cases of gross and flagrant negligence or wilful misconduct on the part of the workman injured. The plan submitted is as follows:

There should be a Board of Industrial Insurance Commissioners, the constitution of which is a matter of detail. This board would have the power to issue danger licenses to employers who wish to engage in dangerous employments, a license fee being charged therefor, with fine for refusal. Any employer having such a license would not be liable to a damage suit on account of industrial accidents happening in his establishment unless he was guilty of gross and flagrant negligence or wilful misconduct. The license fee would be graded according to the character of the industry, and according to the wage bill, with readjustments according to subsequent experience. The employer would have the right to deduct a sum equal to one-half the license fee from the wages

which he pays, this being assumed to be a part of every wage contract, unless written notice was given to the contrary both to the employer and to the board of insurance commissioners. When an employee gives such notice, his possible benefits would be diminished, as would also the license fee of the employer. The reason for putting the matter in this way is to include all employees unless they have a good reason for withdrawing. Under a voluntary system a workman must have foresight enough to enter an insurance scheme; under the plan proposed, he would be automatically included unless he takes the initiative in getting out. Thus there would be no danger of infringing his liberty, and in any case, he would still be entitled to a small compensation in case of accident. But if the employer had paid his share of the license fee on account of such employee, he would still not be liable to a suit except for gross and flagrant negligence or wilful misconduct. This is less favorable to the workman than the English law. If it is not thought favorable enough, matters should be balanced up, not by making damage suits easy, but by asking the workman to pay say one-third instead of one-half. In the exceptional cases of suit against the employer, which it is thought would be so unusual that he need not insure himself against that contingency, his defense would be weakened by abolishing the doctrine of the assumption of risk and the fellow-servant doctrine.

Instead of paying a license fee, the employer might obtain his license by furnishing proof that he had insured his men with some company or organization, the policy being like the standard policy prescribed in the statute, or equivalent to it.

The license fees would constitute a fund, out of which full medical aid and weekly or monthly benefits would be

paid. In general the cost would be twice as great as the English scale of 1897, the share of each party being about equal to present rates for liability insurance.

The board of insurance commissioners would have to employ administrative agents and medical inspectors as the liability companies do now. This does not mean that the state would be in the insurance business. The fund would not only be distinct from other revenues, but probably could not even be guaranteed by the state.

As already indicated the employments covered would be those which, according to the best statistics available, have an accident rate higher than that of office workers or retail mercantile employments, where there is practically no occupational hazard. Possibly farming, except where power machinery is employed, should be expressly exempted, and also persons engaged in interstate commerce.

The advantage of the plan here outlined lies in its simplicity and definiteness. The employer pays his license fee, and he gets protection which he does not have today even when he carries liability insurance, for frequently the damages allowed are greater than the limit specified in the policy. On the other hand, the workman or his dependents get a certain payment. State supervision will guarantee fairness and justice in the working of the system.

The plan is offered as simply one way out of a difficulty. Further discussion may show a better way.

An Outline of a Bill.

To create a board of industrial insurance commissioners, to establish an accident fund, to provide for licensing employers, and to amend the statutes relating to the liability of employers for damages to injured employees.

Section 1. *Board of Industrial Commissioners.* The

Insurance Commissioner, the Commissioner of Labor, and the Attorney General are created a Board of Industrial Insurance Commissioners to manage the accident fund. (The constitution of this commission is a matter of detail; it may be desirable to confine it to one department, or to create a new commission, or to have an incorporated body of a quasi public character, for which there would be precedent in the Horticultural Society and others in this state.) The state could contribute a definite amount annually for the expenses of this board.

Section 2. *Danger license.* After a specific date, no person shall engage in the employments specified in section 11 without a license from the board of insurance commissioners. This license must be renewed annually. Refusal to apply for a license or to comply with conditions necessary to obtain same, or to renew same annually, would subject one to a fine, graded according to the number of persons employed, such fines being paid into the accident fund, provided for later.

Section 3. *License fees—how determined.* It would be the duty of the insurance commissioners to classify the industries covered by the act in detail, according to the dangerous character of the industry. That this is possible is shown by the fact that the liability companies have done it. The fee of each employer would at first be determined by his classification and wage bill, but if subsequent experience showed that his establishment caused fewer accidents to be compensated than indicated by the accident rate of his class, his fee might be reduced not more than fifty per cent. This reduction would thus not be dependent on political or other favoritism, but according to scientific accounting. The general level of the fees are determined by the benefits granted in section 8, those benefits being arranged on the supposition that the fee

would be about twice the existing cost of employers' liability insurance, one-half being paid by the employee as provided in the next section.

Section 4. Every contract whereby an employee agrees to work for an employer in the employments specified in section 11 shall be understood to authorize the employer to withhold from wages to be paid for such employment as much as one-half the amount which the employer must pay to secure a license from the board of insurance commissioners, unless the employee gives written notice to the employer and to the board of insurance commissioners to the contrary. Any employee who gives such notice shall be entitled to only one-half the benefits specified in section 8, and the employers' license fee shall be diminished accordingly.

(The reason for putting the matter in this way is to include all employers unless they have a good reason for withdrawing. Under a voluntary system, an employee must have foresight to enter a scheme; under the plan proposed he is automatically included unless he takes the initiative in getting out. Thus there is no real danger of infringing his liberty. In any case, he would still be entitled to some definite compensation in case of accident.)

Section 5. *Licensed employer not liable—exception.* Any employer who has obtained a license according to section 2 shall not be liable to prosecutions for damages to employees on account of accidents for which the injured employee is entitled to compensation under section 8, unless the proximate cause of the accident is the gross and flagrant negligence or the malicious or wilful misconduct of the employer, or unless the employer has knowingly refused to comply with the reasonable orders of a factory inspector which might have prevented such accident.

(This practically exempts the employer. It is less favorable to the workman than the English law. If it is not thought favorable enough, matters should be balanced up, not by making damage suits easy, but by asking the workman to pay say one-third instead of one-half of the license fee.)

Section 6. *Liability of employers in case of gross and flagrant negligence or wilful or malicious misconduct.* In an action brought by an employee against his employer in the exceptional cases provided for in the preceding section, the contributory negligence of the employee involved in his voluntarily entering into a dangerous employment shall not be a bar to recovery. Nor shall a slight inattention or mistake on the part of the workingman injured or any negligence on the part of a fellow servant be a bar to recovery. But gross and flagrant negligence or malicious or wilful misconduct, including repeated disobedience to reasonable rules for the conduct of the work which the employer has attempted to enforce, shall be a valid defense for the employer.

Section 7. *Diminished benefits to employees who resort to a suit.* Any employee who brings a suit against his employer for damages on account of an accident, and who otherwise would be entitled to full benefits under section 8 of this act on account of such accident, shall forfeit such part of such benefits as the employer's contribution of the premium paid on account of such employee. If without such suit he would be entitled to only half benefits because he has made no contributions to the employers' license fee, he shall receive no benefits.

Section 8. *Benefits to injured or their dependents.* When an employee to whom this act applies as specified in section 11 is injured while at work for his employer, and as a result of such work, he or his heirs shall, regardless of negligence, be entitled to the following benefits to be

paid out of the accident fund created by this act, except that no benefits shall be paid for injuries which have been intentionally self-inflicted, and unless the benefits are modified according to section 4 or section 7: (1) *in case of death*,—funeral and other expenses due to the accident, and a pension to widow or dependents for a period of ten years, equal to half wages, with a possible commutation to a lump sum; (2) *in case of incapacity*,—full medical aid and as much as one-half wages during incapacity, the exact amount depending on the degree of incapacity.

Section 9. *Payment of benefits.* (1) The board of industrial insurance commissioners shall appoint such administrative agents, medical inspectors, and make such necessary regulations that, when an accident happens that is covered by this act, the benefits may be paid promptly. (2) The said board may refuse to pay the benefits if the person refuses to submit to a medical examination to determine the degree of incapacity or if it discovers intent to defraud the accident fund.

Section 10. *Accident Fund.* The license fees and fines provided to be paid by this act shall constitute an accident fund, in the custody of the State Treasurer, payments from which would be made on the order of the Board of Insurance Commissioners. Provision would have to be made for the disposition of a possible surplus or the covering of a possible deficit. The latter might be done by authorizing a special assessment upon licensed employers, or by requiring an entrance fee until a guarantee fund had been accumulated, but the state could not guarantee the fund directly. Some of the general expenses of administration could be done by direct appropriation.

Section 11. *License may be obtained by substituting other schemes.* If any employer employing an average

of 1500 men for five years preceding the enactment of this law, or any association of employers who have collectively employed an average of 1500 men for five years preceding the enactment of this law, shall organize a voluntary insurance organization which will guarantee to the men in his or their employ benefits fully as large and fully as advantageous in method of payment as the benefits specified in this act, and at no greater cost to the employees, or if an employer shall prove that he has purchased a policy from an insurance company, which policy guarantees benefits fully equal in amount and method of payment to those specified in this act, accident licenses shall be issued to such employer or employers without payment of a license fee into the accident fund.

(Further provision would have to be made for complete publicity and statistical reports in the form prescribed by the board of insurance commissioners.)

Section 12. *Employments covered.* The employments covered would include all that have a clear trade hazard, except farming and except persons engaged in interstate commerce.

Section 13. *Settlement of disputes.* If the amount of compensation granted by the board is believed to be erroneous the employee or employer may appeal to a board of arbitration, previously organized in each locality. From this board an appeal could be taken to the insurance commissioners and thence to the courts if the decision was not satisfactory to all concerned.

THE CANADIAN INDUSTRIAL DISPUTES ACT.

A. SHORTT.

The object of this paper is to give some account of the practical operation of the Canadian act for the prevention of strikes or lockouts arising from industrial disputes connected with public utilities. The observations, deductions and conclusions which are here presented are based chiefly upon the experience of the writer as chairman of eleven different boards of conciliation and investigation, established under the act, and dealing with disputes affecting almost all of the typical forms of public utilities to which the act applies, namely,—railroads, including their telegraph services, lake and river shipping, street railways, coal and metal mining.

No attempt is made to give a systematic analysis of the act, or to discuss in detail the merits and defects of its various provisions. This service has been very thoroughly performed by Dr. Victor S. Clark, of Washington, in his admirable report on "The Canadian Industrial Disputes Investigation Act of 1907", undertaken at the instance of President Roosevelt, and published in the *Bulletin of the Bureau of Labor* for May, 1908. To this report I would refer those who desire to obtain the most complete information available as to the nature of the act, the objects of its various provisions, and the general results of its operation up to the time of the preparation of the report last spring. With so excellent a background for general reference, I feel justified in devoting my paper to certain special observations and deductions derived

from a somewhat intimate experience of the operations of the act.

The title of the act in question, which came into force about the beginning of April, 1907, is "An Act to aid in the Prevention and Settlement of Strikes and Lockouts in Mines and Industries connected with Public Utilities". The short title is "The Industrial Disputes Investigation Act, 1907". But the still shorter title by which it is commonly known in Canada is "The Lemieux Act", so named from the Minister of Labour in the Dominion Cabinet. Yet, as Mr. Lemieux has frequently pointed out, the act was chiefly compiled by the Deputy Minister of Labour at the time, Mr. Mackenzie King.

The act does not undertake to deal with all labour disputes, but only with those affecting public utilities; and even here it does not provide for a compulsory settlement as the result of arbitration. It simply requires that before a strike or lockout may take place there shall be a reference of the dispute to a board of conciliation and investigation composed of three members, one appointed by the employer, another by the employees, and a third selected by these two, or, in default of their agreement, by the Minister of Labour. Should this board be unable to effect a settlement, then, on the presentation of its report to the Department of Labour, the parties are free to adopt any method of settlement they please, including a strike or lockout. Thus, though the board of conciliation and investigation has considerable legal power in the way of summoning witnesses, taking evidence under oath, investigating books and premises, etc., it has no legal power to force a settlement between the parties. If, however, the methods of conciliation should fail to bring the parties to an agreement, the results of the investigation are to be placed before the public in the shape of the

report of the board, through the medium of the Labour Department, and it is expected that this report will afford a basis for the formation of an intelligent public opinion, in the face of which neither the employer nor the employees would care to maintain a position adverse to public sympathy. So far as the experience of the act for some eighteen months may be judged, the general expectation as to the efficiency of its methods has been reasonably justified. Yet, naturally enough, it has met with criticism from both sides, as has indeed been the case with practically all legal or other devices for the adjustment of conflicting interests.

Having outlined the purpose of the act, we may take up the actual operation of a typical board of investigation and conciliation, in dealing with a matter in dispute.

Where both parties have nominated a member of the board, and the chairman has either been agreed upon by the other members or, in default of their agreement, has been appointed by the government, each party as a rule undertakes to present its own case before the board. Where, however, one or other party has refused to nominate a member of the board, either claiming that there is nothing to arbitrate or that it is impossible to recede from the position which they have taken, the board, though completed by the Department of Labour, is very unlikely to effect a settlement. The writer of this paper having had to face two such cases, it was felt that the first thing to be done was to get the objecting party to waive the objections and to agree to take part in the presentation of the case before the board. In both the cases referred to the parties eventually withdrew their objections, undertook the presentation of their cases before the board, and a settlement was ultimately effected in each instance.

When a board is constituted, each party is commonly

represented before it by three persons, usually officials of the company in the case of the employers, and, on the other side, special delegates from a general committee of the employees. This special committee commonly consists of a general salaried officer of the union, not in the employment of any company, assisted by a couple of union officials who are in the employment of the company. Assisting and advising this special committee, there is commonly a larger committee representative of the general body of the employees. In the case of railway and telegraph companies, the general committee is selected from different districts throughout the operation of the system. The general officers of the company, on the other hand, are commonly assisted by minor officials who are in direct touch with the conditions under dispute. As a rule no restriction has been put upon the number allowed to be present on either side.

In the case of all the boards presided over by the writer, it was arranged that there should be no newspaper reports of the proceedings before the board. The objection to such reports has been that the very calling for a board implied that there were more or less radical differences of opinion and assertions of right, which the respective parties were about to lay down and defend, but which, in the course of the proceedings before the board, must be given up or at least greatly modified on one or both sides if a settlement were to be reached. In a court of law the arguments on either side are presented and maintained to the close of the case, the verdict is given by the court and accepted of necessity. There is no objection, therefore, to the publicity of the argument. But where, as before a board of conciliation, the verdict is to be reached by concession and compromise, and voluntarily accepted by both parties, it is not so readily

reached if there is a daily record in the press of every modification of the original claims, which were advanced with confidence and backed with vigor through all the fruitless conferences which have preceded the reference of the case to a board. Moreover, in the presence of the press there is a strong temptation to talk to the gallery rather than to the subject in hand, all of which is very inimical to that attitude and frame of mind which is essential to the settlement of difficult and often bitter disputes, which only come to such a board when all other methods of settlement have failed. As to the interest of the public in the case: when a settlement is reached the chief public interest is served; and when it is not reached a definite and intelligent report of the whole case is presented to the public, which, from such a report, is better able to judge of the real merits of the respective cases than from the fragmentary and picturesque notes of the reporter, wherein the cutting blasts and high temperatures are fully recorded, but the calm weather largely ignored.

Though provision is made in the act for the issuing of subpoenas to compel the attendance of witnesses, and though this has been taken advantage of in some cases, yet our boards never found it necessary to resort to any legal machinery, either to secure witnesses or procure such documentary evidence as was essential to an understanding of the matters in dispute. Where the representatives of both parties to a dispute are in each other's presence, before the board, and familiar with the conditions under which the services rendered are performed, there is little dispute as to actual matters of fact; though there is naturally much difference of opinion as to the conclusions to be drawn from the facts, or the rights and obligations which are connected with them. Where also

no advantage is permitted through an appeal to technicalities, and where all parties are permitted to modify or change their views without prejudice, and where no conditions past or present having an essential bearing on the matters before the board are barred from consideration, there usually results a free and frank discussion of all phases of the points at issue. The result is that in a preliminary survey the majority of the matters in dispute are eliminated, either by the employer conceding the claims of the men or undertaking to remedy abuses, the real character of which is frequently learned for the first time; or by the employees withdrawing their claims on learning how exceptional or intangible they are, or how impossible it is to frame practical regulations covering them. A frequent demand was one for the introduction of some new general rule which, as it often turned out, was intended to cover only one or two special cases, which should have been dealt with by the grievance committee.

Thus, by a process of give and take and the recognition, frequently for the first time, of the real difficulties in each other's situation, very many of the matters in dispute may be disposed of in conference, leaving only those on which the opposing parties hold more or less radically inconsistent views, and the waiving or conceding of which would involve more or less far-reaching consequences. Once the essential differences between the parties have been definitely brought out, and the grounds on which the respective claims rest have been made plain, and once the minor points in dispute have been cleared off or disposed of, there is usually found to be little need for prolonging the discussion between the two parties before the board. Hence at this point, if a settlement has not been reached, the sessions of the board are usually

adjourned. It might seem that, having reached this stage, the board has nothing further to do but to sum up the facts and arguments, reach a decision, and frame an award, leaving to the parties the option of accepting or rejecting it. If both accept the award the dispute is at an end; if not, they are free to continue it or seek a settlement of their own, and in doing so to resort to a strike or lockout. Reports have been presented at this stage, some of which have been accepted and others rejected by one or both parties. Not in all cases, however, where awards have been rejected, have industrial struggles followed; though in the most important cases they have, notably in the recent strike of the mechanical trades of the Canadian Pacific Railway.

In our boards, however, the incident was never regarded as closed when we had submitted our proposals for a settlement and they were not accepted, as sometimes happened. The parties were seldom brought together again, but negotiations between them were conducted by the board with the chairman as a common medium, assisted, in dealing with the employers, by their representative on the board, and, in dealing with the employees, by their representative. Occasionally, however, the chairman conducted the final negotiations alone. The object of these negotiations was to find, on either side, the lines of least and also of most resistance, to overcome prejudice, to plead what seemed to the board or the chairman as the just cause of each side with the other, and gradually to break down or dissolve away the barriers between the parties until so little remained that it was not worth while to risk a great and uncertain struggle for so small an ultimate advantage, even if successful.

While it is true that in labor disputes there is much that is mainly due to mutual suspicion, personal preju-

dice, and perhaps honest misunderstanding of each other's motives and conditions, yet it is also true that there are very real and fundamental economic and social problems to be dealt with, in facing which one may thoroughly sympathize with both sides, and which are not therefore to be disposed of by any amount of good feeling or a clear understanding of each other's position. But, as these fundamental problems must be carefully and frankly dealt with if a settlement is to be reached, it is essential that they should not be complicated by misunderstanding and prejudice, or the arousing of those class and personal feelings which, however trivial and unreasonable in themselves, are, after all, chiefly responsible for the strike and the lockout. Yet, as in the end some settlement of the real problems must always take place, in the negotiations special emphasis was placed on the fact that the real question was not one as to agreement or non-agreement, but as to agreement with or without a strike, and it was urged that it were better to have reasonable concession without loss than concession to mere superior strength, which might or might not be on the side of justice, and where loss was certain to be multiplied manifold.

The character of the negotiations carried on between the close of the proceedings before the board and the final adoption of a settlement, depends upon a great variety of conditions, in which, of necessity, the personalities of the parties presenting the respective cases constitute no small factor, while the state of the labor market and the prospects of trade are naturally important considerations.

While, in certain respects, the board acted merely as a pathfinder, seeking the line of least resistance, yet it had also to lay down and strongly support by all reasonable

argument, backed by concrete demonstration, certain radical principles of practical justice which were not always very readily admitted on one side or the other. There were certain general principles for which the chairman of the board considered it necessary to steadily contend, irrespective of the nature of the dispute in question. The more important of these were the following: first, on behalf of the employees, the wisdom and necessity of recognizing the labor unions, in the sense that no employees should be discriminated against because they were members of labor unions or officers in them; second, on behalf of both employers and employees, the principle of the open shop, in the sense that no one should be forced to join a trades union as a condition of obtaining employment, and hence that all agreements reached, whether negotiated with trades union officials or not, were to apply as between the company and its employees, regardless of whether they were members of trades unions or not. In discussing the schedules of rules and regulations under which services were to be performed and the rights and privileges of employers and employees to be defined and safeguarded, the principle was always maintained that the employer was essentially entitled to manage his own business, while the employees should be free to manage theirs. The company must be as free to judge of its officers and their promotion as the employees to elect their union officials and judge of their services in their interests. This does not alter the fact that it is as unwise for a company to employ an officer who is unable to get on well with his men, be they union or non-union, as it is for a union to elect an officer who is continually making trouble with the employer. Nevertheless the appointment of the one and the election of the other are matters to be ultimately dealt with by the company, on the one hand and the employees, on the other.

The normal problems to be dealt with before boards of conciliation, and which furnish the real and practical bases for negotiation, are those concerned with rates of pay, hours of labor, over-time, conditions of promotion, and reasonable protection for life, limb, and general health. In covering these matters our boards usually discouraged the multiplying of rules and regulations, many of which often attempt to deal either with trivial matters or special cases. In the matter of promotion it was generally held that while seniority should prevail, where all other things were equal, yet it was not in the interest either of the men or of the company that seniority should be preferred to merit. Seniority as the chief factor in promotion is as inadmissible for the efficient conduct of a large and complex business or a public service as it would be in the selection of the chief officers for the administration of the affairs of a trades union. It is true that, inasmuch as promotion by seniority eliminates completely the personal judgment essential to promotion by merit, it enables the union officials to escape a great deal of difficult material for grievance committees. For, however evident it may be to an impartial judge that an individual is legitimately passed over in the matter of promotion, it is but rarely evident to the man himself, and his righteous indignation is apt to enlist the sympathy of his friends and breed trouble for the union officials, which is by no means offset by the self-complacency of the party promoted; for the ills of life are much more clamorous than its blessings. As the domestic troubles of the unions eventually affect their relations with the employers, practical wisdom should counsel a reasonable concession on the part of the employers to promotion by seniority.

In the matter of wages and conditions of employment

it was seldom found possible to accept, in practice, the principle that the same service should be everywhere paid for at the same rate, even as between competing companies in the same locality. There were historic, financial, and other factors, in the case of railways for instance, which rendered it expedient to recognize existing differences in rates of pay and conditions of employment, not only as between different railways, but as between different districts or sections of the same railway. Similarly, in coal mines, street railway systems, etc., uniformity of rates and conditions could not always be maintained. On the other hand, there was a tendency on the part of employers to withhold reasonable information as to the conditions under which different employees were engaged and promoted. As a rule this attitude appeared to be simply the result of historic conservatism and honest prejudice. But the very discontent and suspicion of the employees, owing to the withholding of such information, were frequently regarded as sufficient evidence of the wisdom of maintaining a secrecy which was of little or no advantage to the company, while the occasion of much irritation among the men. On these and similar points it was found necessary to take a stand on principle, and to patiently argue the matter out with one or other, sometimes with both of the parties to the dispute.

In practically all cases there were features in the dispute where the legitimate claims of both parties considerably overlapped. The profits of a company and the wages of its men might be alike below the rates of other competing companies. The geographic and climatic location of a railroad, the hardships and dangers of a water route, the geological peculiarities of a coal mine might render one much more disagreeable, hazardous, or costly to operate than another, while the profits of the company

were not seldom in inverse ratio to the difficulties of operation. And yet, for neither capital nor labor, and still less for the public, was the abandonment of the property a reasonable solution. Here, then, the perfectly reasonable claims of both parties might have to be denied, not on principle, but in practice, and a compromise sought which would be the least unreasonable or unfair for both. Yet, where each side was looking frankly to its own interest, it was the problem of the board to discover a basis of settlement which both parties could be persuaded to accept.

Sometimes when it appeared that all possible grounds for agreement or acceptable compromise had been exhausted, without bringing the parties within each other's range of concession, it was found advantageous to drop the negotiations for a few days and permit all parties, the board included, to ruminate on the matter in all its phases, and then to tackle the residuum once more when the mellowing influences of time and reflection had made concession look less like personal weakness and inconsistency, and permitted perhaps the restatement of the proposed settlement in a more acceptable form, or in one at least which had not the disadvantage of having been explicitly rejected.

As to the general attitude of the leaders of capital and labor towards each other, and towards a board of conciliation, one obtains a variety of impressions, the general outcome of which is a strong conviction that while one may recognize the operation of certain economic principles, yet the personal factor is a very powerful one, and the study of a particular case is more concerned with the manner in which economic principles affect the personal factor than the manner in which the personal factor affects economic principles. But while abstract economic

theories are of but slight application, the study of practical economics is of great value. As experience in this line widens, one is more and more convinced that the method of Adam Smith is very much more real and effective, and hence more truly scientific, than the method of Ricardo, and of some more modern theorists. After all, economics is more a concrete and descriptive science than an abstract or theoretic one.

Where the personal equation of leadership or organizing power is apparent on both sides of the table, though in quite different forms, one recognizes that it is not so much a question of expounding economic principles as of the diplomatic handling of human personalities, the elimination of misconceptions, the removing at once of sensitive suspicion, the memory of old struggles, and the unwillingness to exhibit the apparent weakness of receding from a stand once taken. In dealing with all these primary phases of the subject, however, the man who is equipped with a background of working economic principles, derived from a study of concrete economic conditions, historic and contemporary, has a very great advantage over those who have no similar training. For after all both sides in an industrial dispute, though often scornful enough of ordinary economic doctrine, are themselves the exponents of economic theories which not infrequently differ from those of the schools in being more narrow and more abstract, because generalized from a smaller or more highly specialized range of facts. Thus the value of an economic training in dealing with such matters is not so much that it enables one to make a direct appeal to economic principles in the settlement of disputes, as that it enables one to realize the one-sided or impracticable character of many of the generalizations made by people who have given little or no attention to economics.

As to the general effect of the Canadian law it may be said that the experience of the act throws much interesting light on the relative merits of compulsory and voluntary methods in the settlement of labor disputes. The combination in the Canadian act of the compulsory feature, in requiring the submission of the matters in dispute to a board of conciliation before a strike or lockout may take place, and the voluntary feature, in permitting either or both parties to accept or reject the award of the board, appears to promise the best method of effecting reasonable settlements and of promoting improved relations between capital and labor. Experience indicates that it is impossible, in a democratic community, to compel any considerable number of men to work under given terms of employment; nor, in spite of the hostages to the courts which the property of an employer furnishes, is it possible to compel him to employ any given number of men on certain prescribed terms. Freedom to accept or reject proffered terms of employment, and freedom to manage one's own business are essential to sound economic relations in a free community. Experience has proved also that the compulsory feature in the Canadian act is almost impossible of enforcement where either of the parties considers it advisable to refuse to submit its case to a board. Where such refusal has taken place, however, it has usually been on the supposition that the acceptance of the award of the board was essentially compulsory. Thus it is only the voluntary nature of the ultimate settlement which renders the compulsory submission of a case to a board at all workable. To refuse to submit one's case to a board, where the award is not binding, is a rather obvious confession that the case will not bear investigation, and is likely to invoke the adverse influence of public opinion.

In securing the submission of an industrial dispute to an impartial board, more than half the battle is won; for, in the proceedings before the board, both parties learn, as a rule, much more of the real merits of each other's case than is otherwise at all possible. Moreover, where there exists a constant fear of being committed to some objectionable decision by the evidence presented, in the case of compulsory arbitration, each party is particularly guarded in its own evidence, and particularly anxious to block or counteract the evidence presented on the other side. But where the evidence presented and the discussion before the board do not commit either side to more than they are ultimately willing to accept, and where they are not menaced by the selective whims of a press reporter, there is naturally much more freedom and latitude in the treatment of the case. Many phases of the subject are taken up, and vital relations of capital and labor discussed, in a manner which is frequently of the greatest possible educational value to both sides, and the good effects of which are by no means confined to the case in hand.

Considering how very seldom in their discussion of the merits of their respective cases the weaknesses of their own position and the strength of their opponents are frankly admitted, I have been agreeably surprised to find how readily in the end, even in the discussion before the board, but more particularly in the separate discussions afterwards, each side could be brought to concede the validity of their opponents' position on many points. Another encouraging feature, considering what interests are at stake, is the general calmness and good feeling which prevail in the discussions before the boards. Occasionally the temperature may exhibit a sudden rise when some tender spot is rubbed, but such occurrences are rare.

Much the liveliest case we experienced, in the way of an exchange of picturesque compliments, was one in which two very respectable international unions were seeking to establish themselves on the same base and on the same side of it with reference to a railway company.

There are many reflections suggested by the experience of the concrete cases which have been brought under the operation of the Canadian act, but only a few samples could be presented in this paper. The policy and method of the Canadian act by no means afford a certain remedy for industrial disputes. No practical man dreams that industrial disputes can be prevented from occurring, because there will always be cases where justice unavoidably pertains to both sides. There are, however, many disputes which are chiefly due to historic prejudice, mutual ignorance, and misunderstanding, and it ought to be possible to dispose of most of these, and to effect a working settlement in the case of many of the others. All that one may claim for the essential features of the Canadian act is that, if tactfully handled, they provide a reasonable method of securing the maximum of concession with the minimum of compulsion.

THE CANADIAN INDUSTRIAL DISPUTES ACT.

VICTOR S. CLARK.

Professor Shortt reveals his experience in the field of arbitration by laying main stress in his paper on methods of administration rather than on the machinery of the Canadian act. For the main thing is the personnel of the boards and the way they interpret their duties—the success of the law depends upon the tact and fairness of the persons who operate it. Practically, the machinery in itself is a subordinate thing.

I do not think that public opinion alone will prevent strikes, though it may lessen their number and mitigate their evils. In New Zealand and Australia strikes are prohibited by law, investigated by public tribunals, and the merits of every dispute are brought fully before the bar of public opinion. That is, the sanction is public opinion backed by fines and imprisonment. But within two years there have been in New Zealand several important strikes in violation of the compulsory arbitration act; and serious strikes have occurred in Australia in defiance of similar laws. The recent tram strike in Auckland, the largest city of the former colony, was a strike about as big and inconvenient for the public as could have happened in connection with a private enterprise, and it was settled by a special commission outside the arbitration act. The tram strike in Sydney, at nearly the same time, took a similar course. In neither case did public opinion play any appreciable part in preventing an open rupture between employers and employees. Therefore I do not look forward with very sanguine expectation to seeing the Canadian law prevent strikes through public opinion alone. The great value of the act—and its value is great—

lies in its providing a negotiating rather than an arbitrating body, and in thus preventing strikes by bringing the parties to a voluntary settlement, and not by holding over them any sort of a club in the shape of a penalty—moral or otherwise—for striking.

The stronger unions in Canada, directly affected by the law, are not favorable to its present provisions. This applies especially to the railway unions and the Western Federation of Miners. On the other hand, weaker unions regard the intervention of the government favorably. My impression is that the rank and file of the workers like the law better than do the leaders of the organizations. At least my personal interviews with the men pointed that way. If a locomotive engineer or fireman, met on a railway platform, knew anything definite of the act, he spoke of it at least without hostility, and often in a friendly attitude; but all the general officers of the engineers' and firemen's unions seemed clearly opposed to the law.

A chief argument against the Canadian procedure, on the part of well organized workingmen, is that it delays a settlement until the condition of the labor market has changed. The labor leaders say that, when free to strike on the moment, they can negotiate an agreement with their employers determining wages for some time to come, on the crest of the market,—when the demand for labor is most active and wages are highest. But if they must delay in order to negotiate before striking, as the present law requires, their settlement is likely to be based on the state of the labor market at some date a month or two months later, when conditions are more favorable to employers. They ask pertinently enough whether, assuming labor to be in a market sense a commodity, the seller of any other commodity, like wheat or provision

or coal or pig iron, would care to submit to prices prepared for him some weeks after the time *he* thought most favorable for selling.

I intended to underline several paragraphs of Professor Shortt's paper, but Professor Skelton has anticipated my comments. The Canadian law has up to the present promised better than any other law to prevent strikes. It does not touch—as do the Australasian statutes—the equally important question of sweating. We shall see—in fact we already do see—the latter acts turning more and more to remedying the ill condition of underpaid women and children, wage boards being substituted for arbitration courts; but, because this is less spectacular than stopping great industrial conflicts, it is sometimes regarded as a minor function—when it truly is a major function—of Australasian legislation. Into this field the Canadian law does not pretend to enter, but in its own peculiar field it gives most promising results.

ORGANIZATION AND WORK OF THE AMERICAN ASSOCIATION FOR LABOR LEGISLATION

I. COLLECTION, CLASSIFICATION AND CATALOGING OF DATA AND MATERIAL with coöperation of Wisconsin Legislative Refer- ence Department.

A. *Laws and Administrative Rules.*

Of all states and foreign countries arranged by subjects.

B. *Critical and Explanatory Data.*

1. Court briefs and decisions.
2. Opinions and criticisms of administrative officers.
3. Decisions of attorneys general.
4. Clippings, letters, statistical data bearing upon the history, the efficiency or deficiencies of legislation and administration.

C. *Bibliographical.*

1. Books and articles, card cataloged up to date.
2. Record of investigations throughout the world.

II. INVESTIGATION WORK.

By special workers and field investigation with coöperation of Federal and State Labor Bureaus, Factory Inspectors, Manufacturers' Associations, Labor Unions, Settlements, Social Workers, Charity Organization Societies, Medical Colleges, Associations and Boards for Health and Sanitation, Economists, American Bureau of Industrial Research, Carnegie Institution, Legislative Reference Departments, Actuaries, Societies for Industrial Education, Russel Sage Foundation, Consumers' Leagues, Child Labor Committees, State and Local Branches of American Association for Labor Legislation.

A. *Working of Present Laws in America.*

1. Preparation of monographs, bulletins, bibliographies.

B. *Investigations as to the necessity for other remedies or preventive measures.*

1. Uniformity and adequacy of accident and vital statistics.
2. Uniformity and efficiency of Bureaus of Labor.
3. Industrial health and efficiency, prevention of industrial diseases, and poisons.
4. Insurance, unemployment and other measures.

III. PUBLICITY.

1. *Bulletin of the International Labor Office*, \$3.00 per year, including membership.
2. *The Survey*, Current Items, reviews and special articles, \$3.00 per year, including membership.
3. Monographs, leaflets and pamphlets.

*The fundamental purpose of labor legislation is the conservation of
the human resources of the nation.*

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Third Annual Meeting

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Proceedings

Reports

Addresses

Labor and the Courts

Labor Legislation and Economic Progress. Henry W. Farnham.

Constitutional Limitations and Labor Legislation. Ernst Freund

Problems of Labor Legislation under our Federal Constitution.

Frederick N. Judson.

Precedent versus Conditions in Court Interpretation of Labor
Legislation. George G. Gosat.

Constitutional Problems in Workmen's Compensation. H. V. Merzer.

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PART I.

THIRD ANNUAL MEETING of the AMERICAN ASSOCIATION FOR LABOR LEGIS- TATION.

December 28-30, 1909.

The American Association for Labor Legislation held its third annual meeting in New York City, December 28-30, 1909. The program, as previously arranged, and reprinted below in condensed form, was carried out with but slight variation.

PROGRAM

[CONDENSED]

TUESDAY, December 28, 2.00 p. m., Horace Mann Auditorium, Columbia University.

PRESIDENTIAL ADDRESSES:

President A. Lawrence Lowell, of the American Political Science Association.

President Henry W. Farnam, of the American Association for Labor Legislation, "Labor Legislation and Economic Progress."

WEDNESDAY, December 29, 3.30 p. m., Hotel Waldorf-Astoria.

BUSINESS MEETING: Reports; Election of Officers; Meeting of Administrative Council, following the business meeting.

THURSDAY, December 30, 2.00 p. m., Assembly Hall, Metropolitan Building (No. 1 Madison Ave.).

JOINT SESSION WITH THE AMERICAN POLITICAL SCIENCE ASSOCIATION. General Topic: "The Relation of the State to Labor."

1. Prof. Ernst Freund—"Judicial Limitations and Labor Legislation."
2. Hon. Frederick N. Judson—"The Problem of Labor Legislation under our Federal Constitution."
3. Prof. George G. Groat—"Precedent Versus Conditions in Court Interpretation of Labor Legislation."
4. Mr. H. V. Mercer—"Constitutional Problems in Workmen's Compensation."

The first session, on Tuesday afternoon, December 28th, was held jointly with the American Political Science Association. The presidential addresses of Henry W. Farnam and A. Lawrence Lowell were the special features of this occasion. Professor Farnam's address on "Labor Legislation and Economic Progress" is printed in the third part of this report.

At the second joint session with the American Political Science Association, on Thursday, December 30th, the general topic was "*The Relation of the State to Labor.*" The four papers by Ernst Freund, Frederick N. Judson, George G. Groat and H. V. Mercer, are printed in the third part of this report.

ANNUAL BUSINESS MEETING.

The annual business meeting of the American Association for Labor Legislation was held at the Waldorf-Astoria, Wednesday afternoon, December 29th, with President Henry W. Farnam in the chair. The Report of Work for 1909 was read by the Executive Secretary, John B. Andrews. Upon motion, the Association voted to print this paper and it constitutes the second part of this report.

Upon recommendation of the Nominating Committee, Professors Stephen W. Gilman and William A. Scott of the University of Wisconsin, were duly appointed to audit the accounts of the Association for the year 1909. Upon recommendation of the General Administrative Council, Section 5, of Article V (Local Sections), of the Constitution was amended, so as to read: "The officers of this Section shall be a president and a secretary-treasurer, who with three *or more* other members, shall constitute the Executive Committee." The Constitution, as revised, is printed at the end of Part One of this report.

The following resolutions with reference to the International Unemployment Conference, were unanimously adopted :

"Resolved, that this Association appreciates the importance of the problem of unemployment, and approves the proposed conference on this subject, to be held in Paris in the summer of 1910.

Resolved, that the President be authorized to appoint a special committee to co-operate with the Paris Committee in arranging the details of this conference.

Resolved, that the President be authorized to appoint representatives of this Association to attend the conference.

Resolved, that this Association does not favor the organization of a distinct society on Unemployment in the United States at this time."

In formally accepting the resignation of Secretary Commons, the following resolution was read and adopted :

"Resolved, that this Association in regretfully accepting the resignation of Professor Commons as Secretary, desires to record its high appreciation of the great service which he has rendered the cause of Labor Legislation in the United States in his work as Secretary of the Association during its formative period."

The following officers were elected for the year 1910:
President, HENRY W. FARNAM.....*New Haven, Conn.*
Secretary, JOHN B. ANDREWS.....*New York City*
Assistant Secretary, IRENE OSGOOD.....*New York City*
Treasurer, V. EVERIT MACY.....*New York City*

Vice-Presidents :

JANE ADDAMS, Chicago.

Louis D. Brandeis, Boston, Mass.	J. W. Jenks, Ithaca, N. Y.
Robert W. DeForest, New York.	S. M. Lindsay, New York.
Richard T. Ely, Madison, Wis.	Warren S. Stone, Cleveland.
Samuel Gompers, Washington.	Towner K. Webster, Chicago.

In addition to the officers, the following members were elected to the General Administrative Council:

Thomas Sewall Adams, Madison.	Florence Kelley, New York City.
Felix Adler, New York City.	Isaac A. Loos, Iowa City.
George W. Alger, New York City.	James M. Lynch, Indianapolis.
George E. Barnett, Baltimore.	Charles McCarthy, Madison.
W. D. P. Bliss, Washington, D. C.	Roswell C. McCrea, New York City.
John Graham Brooks, Cambridge.	William E. McEwen, St. Paul.
Robert Bruere, New York City.	William D. Mahon, Detroit.
Edgar T. Davies, Chicago.	Theodore Marburg, Baltimore.
Edward T. Devine, New York City.	John Martin, New York City.
Peter E. Dietz, Oberlin.	Wesley C. Mitchell, Berkeley.
Mary Dreier, Brooklyn.	Beverly B. Munford, Richmond.
Elizabeth G. Evans, Boston.	Edgar Gardner Murphy, Montgomery.
Lee K. Frankel, New York City.	Simon N. Patten, Philadelphia.
John P. Frey, Cincinnati.	Mrs. Raymond Robins, Chicago.
Andrew Furuseth, San Francisco.	John A. Ryan, St. Paul.
J. J. Gardner, Atlantic City.	Louis Schram, Brooklyn.
Mahlon M. Garland, Pittsburg.	Albert Shaw, New York City.
Charles F. Gettemy, Boston.	Tecumseh Sherman, New York City.
John H. Gray, Minneapolis.	Ethelbert Stewart, Chicago.
Henry J. Harris, Washington, D. C.	H. A. Wheeler, Chicago.
Leonard W. Hatch, Albany.	Robert W. Whitten, New York City.
Roland G. Hazard, Peace Dale, R. I.	Clinton Rogers Woodruff, Philadelphia.
Charles R. Henderson, Chicago.	Robert Woods, Boston.
Hamilton Holt, New York City.	
Robert Hunter, Noroton, Conn.	
Frederick N. Judson, St. Louis.	
Daniel J. Keefe, Washington, D. C.	

SEMI-ANNUAL MEETING OF THE GENERAL ADMINISTRATIVE COUNCIL.

The General Administrative Council met immediately after the annual business meeting, and transacted the following business:

The Executive Committee was elected as follows:

EXECUTIVE COMMITTEE

Charles P. Neill, Washington.	John R. Commons, Madison.
Henry R. Seager, New York.	John Mitchell, New York.
Ernst Freund, Chicago.	The President and the Secretary.

The local Executive Council was elected as follows:

LOCAL EXECUTIVE COUNCIL SAMUEL McCUNE LINDSAY, Chairman.

John Martin.	Anne Morgan.
Adna F. Weber.	John M. Glenn.

On motion the following new members were elected to the Administrative Council: Seth Low, Josephine Goldmark and Anne Morgan.

On motion the President of the Association was elected Chairman of the Committee to the Biennial Congress of the International Association for Labor Legislation, with power to select five or more other delegates.

The appointment of Committees on Industrial Hygiene, Woman's Work, Unemployment and Workmen's Compensation; the completion of the membership of the Administrative Council; and the selection of the time and place for the next meeting of the Administrative Council, and for the next general annual meeting, were referred to the Executive Committee with power.

The Executive Committee was also authorized to arrange for the removal of the national headquarters from Madison to New York; and to fill vacancies and transact all other business appropriate to the Administrative Council until the next meeting of the Council.

CONSTITUTION
OF THE
AMERICAN ASSOCIATION FOR LABOR LEGISLATION

Adopted Feb. 15, 1906
Amended Dec. 30, 1907
Amended Dec. 30, 1908
Amended Dec. 29, 1909

ARTICLE I. NAME.

This Society shall be known as the American Association for Labor Legislation.

ARTICLE II. OBJECTS.

The aims of this Association shall be:

1. To serve as the American branch of the International Association for Labor Legislation, the aims of which are stated in the appended Article of its Statutes.
2. To promote the uniformity of labor legislation in the United States.
3. To encourage the study of labor legislation.

ARTICLE III. MEMBERSHIP.

Members of the Association shall be elected by the Local Executive Council. Eligible to membership are individuals, societies and institutions that adhere to its aims and pay the necessary subscriptions. The minimum annual fee for individuals shall be one dollar, or three dollars if the member wishes to receive the Bulletin of the International Association. The minimum annual fee for societies and institutions shall be five dollars, and they shall receive one copy of the Bulletin, and for each two-dollar subscription an additional copy.

ARTICLE IV. OFFICERS.

The officers of the Association shall be a president, ten vice-presidents, a secretary and a treasurer. There shall be also a General Administrative Council consisting of the officers and not less than twenty-five nor more than seventy-five other persons. The General Administrative Council shall have power to fill vacancies in its own ranks and in the list of officers; to appoint an Executive Committee from among its own members and such other committees as it shall deem wise; to appoint a Local Executive Council of five members to co-operate with the secretary; to frame by-laws not inconsistent with this constitution; to choose the delegates of the Association to the Committee of the International Association; to

conduct the business and direct the expenditures of the Association. It shall meet at least twice a year and on each occasion shall determine the date of the succeeding meeting. Eight members shall constitute a quorum.

ARTICLE V. LOCAL SECTIONS.

Local Sections of this Association may be constituted in any city or state upon certification by the secretary and the Local Executive Council. They shall be governed by the following by-laws:

SEC. 1. The name of this Association is the.....Section of the American Association for Labor Legislation.

SEC. 2. Eligible to membership are members of the American Association for Labor Legislation residing in _____. Members of the American Association for Labor Legislation become members of this local by vote of the Executive Committee of this local section.

SEC. 3. The purpose of this section is to promote the work of the American Association for Labor Legislation in general, also in special relation to the needs of the state of _____.

SEC. 4. Expenses of this section shall be met by the voluntary contributions of members and others.

SEC. 5. The officers of this section shall be a president and a secretary-treasurer, who, with three or more other members, shall constitute the Executive Committee.

SEC. 6. The Executive Committee shall administer the affairs of the section and report at annual or called meetings of members of the section. It shall be the duty of the Executive Committee to arrange programs for discussion of members, to institute and direct investigations, to take measures to increase the membership of the American Association for Labor Legislation, to promote publicity of the policies and recommendations of the American Association for Labor Legislation by publications and meetings.

SEC. 7. An annual meeting of the section for election of officers and for other business shall be held in October of each year.

SEC. 8. These by-laws may be amended at any annual or called meeting of the section, notice of the proposed amendment having been sent to each member at least one month in advance.

ARTICLE VI. MEETINGS.

The annual meeting and other general meetings of members shall be called by the General Administrative Council and notice therefor shall be sent to members at least three weeks in advance. Societies and institutions shall be represented by two delegates each. The annual meeting shall elect the officers and other members of the General Administrative Council.

Amendments to the constitution after receiving the approval of the General Administrative Council may be adopted at any general meeting. Fifteen members shall constitute a quorum.

ARTICLE II OF THE STATUTES OF THE INTERNATIONAL ASSOCIATION

DEFINING THE AIMS OF THE ASSOCIATION.

1. To serve as a bond of union to those who, in the different industrial countries believe in the necessity of protective labor legislation.

2. To organize an International Labor Office, the mission of which will be to publish in French, German and English a periodical collection of labor laws in all countries, or to lend its support to a publication of that kind. This collection will contain:

- (A) The text or the contents of all laws, regulations and ordinances in force relating to the protection of workmen in general, and notably to the labor of children and women, to the limitation of the hours of labor of male and adult workmen, to Sunday rest, to periodic pauses, to the dangerous trades;
- (B) An historical exposition relating to these laws and regulations;
- (C) The gist of reports and official documents concerning the interpretation and execution of these laws and ordinances.

3. To facilitate the study of labor legislation in different countries, and, in particular, to furnish to the members of the Association information on the laws in force, and on their application in different states.

4. To promote, by the preparation of memoranda or otherwise, the study of the question how an agreement of the different labor codes, and by which methods international statistics of labor may be secured.

5. To call meetings of international congresses of labor legislation.

PART II.

REPORT OF WORK:

1909.

The history of this Association during the past year has been characterized by two principal events. One was a great loss to the Association; the other was a distinct gain.

The loss came through the practical resignation of Secretary Commons early in the year, owing to the pressure of University duties and the strain of previous obligations. The gain was a liberal contribution by one of our officers for the purpose of extending the work of the organization.

WORK OF THE ASSOCIATION.

The work of the year 1909 was largely concerned with the promotion of an educational campaign. The two main purposes of the International Association for Labor Legislation are: 1st, To serve as a bond of union to all who believe in the necessity for Labor Legislation; and 2d, To facilitate the study of Labor Legislation in all countries, and to provide information on the subject. As one of the fourteen national sections of the International organization, the American Association has definite duties. These duties are similar to those of the International Association, with the special national obligation of promoting the uniformity of labor legislation in the United States. The entire work of the year has been in conformity with our Constitution, and in direct line with our obligations to the International Labor Office.

The task of collecting and disseminating accurate information is not one of the least important of our undertakings. It is a big step in the direction of greater scientific accuracy in both investigation and legislation.

Perhaps it is true, as we are sometimes told, that it is no longer worth while to argue the necessity and usefulness of labor legislation. Intelligent people, we are told, know that the State must protect itself by protecting its workers. But, however true this may be in the main, it is nevertheless obvious that even the most intelligent people need new facts,—or old ones put in more attractive form,—if they are to continue alert and keen for progressive measures. And when once aroused and educated to a sense of social obligations, most people need to have definite, concrete tools put into their hands before they can be depended upon to work intelligently or successfully.

The need of social safe-guards may be apparent. The need may even be admitted,—which is another step worthy of consideration,—but the best *system* of protection is rarely quite apparent. The determination of the wisest course usually requires systematic and painstaking reasearch, followed by the elaboration and enactment of laws, which in turn lead to the *supreme task*,—that of enforcement or administration. It is in this direction, I take it, that this Association hopes, first of all, to find and cultivate a broad field of usefulness.

Closely following this primary but absolutely necessary work, the Association is preparing, upon the basis of evidence recently secured, and in complete harmony with the International Association, to conduct an active campaign for important national legislation. The American Association also aids its State Branches and Local

Committees in their action for protective legislation within the individual commonwealths.

The work of the past year, which in many respects has been the first year of the Association's *activity*, has necessarily been devoted in a large degree to the preparation and distribution of Association literature. Probably at no time in the history of this country has the demand for exact knowledge on the subject of labor legislation been more insistent. This demand is measured on one side by the frequency of calls upon our Bureau of Information.

BUREAU OF INFORMATION.

The Association has frequent applications for special information, many of them requiring the expenditure of considerable time. These requests for information have steadily increased. Among the many inquiries which have been received, the following are merely typical. Restates and the most progressive foreign countries on the health, safety and comfort of employees, the laws of all states providing for the care of dependent children, bills recently introduced for the protection of women workers, laws regulating the speed of machinery, bibliographical information, and sources of information on the subject of public and private health.

The demands for this purpose upon the time of our limited office staff became so pressing that at our General Administrative Council meeting in Chicago, on April 10th, the United States Government was formally requested to take over this important work. Furnishing information, it was argued, should be regarded as a government function, and a resolution to that effect was adopted.*

Requests for information have continued through-

* Report of General Administrative Council, April, 1909, p. 10.

out the year, and as rapidly as possible they have been answered. It is probable that this phase of our work will increase rather than diminish. Some provision should be made for quickly supplying accurate information. This work is important, and should not be neglected. The Association, however, should not be expected to permanently assume a burden which the federal government can be induced to carry.

BULLETIN OF THE INTERNATIONAL LABOR OFFICE.

The most exhaustive and authoritative source of information on labor legislation is furnished through the American Association in the form of the quarterly Bulletin of the International Labor Office. This bulletin, printed in three languages, German, French and English, is now recognized as the only periodical publication that keeps the reader informed concerning the progress of labor legislation throughout the world.

For a time, the usual delays of preparation and publication of material of this nature, coupled with further unavoidable delays, have made the delivery of the *Bulletin* a slow process. Within the last few months, however, the work has progressed more rapidly, and six quarterly numbers of the *Bulletin* were delivered during 1909. The preparation of this *Bulletin* is an expensive but extremely valuable piece of work. It should be encouraged in every possible way.

MONTHLY DEPARTMENT IN THE SURVEY.

Although the quarterly *Bulletin* furnishes an invaluable review of the labor legislation of the world, it does not attempt to supply the need for a current American publication dealing with this subject. Our Association is scarcely well enough established to consider the publication of an American review, valuable as such a periodical would be. In a less pretentious way, however, our or-

ganization is fortunate in having a regular monthly medium for items of special interest to American readers. An arrangement, made with the editor of the *Survey* magazine, enables our organization to reach a wide circle of readers each month through a special department on Labor Legislation. This department serves to draw the attention of our readers to important publications and news notes of more general interest in our field. It also serves a useful purpose in presenting from month to month a few typical examples of advanced social legislation from European experience.

The *Survey* has also published from time to time, special articles prepared at the request of the Association. Among these articles during the present year were several which formed a very interesting and valuable series on Inter-State Competition.

ANNUAL REVIEW OF LABOR LEGISLATION.

Perhaps one of the most frequent complaints heard with reference to publications of labor laws, is that often in the past they have appeared too late for the use of those actively interested in securing legislation. The nature of the work involves frequent and exasperating delays, and exhaustive reprints of labor laws necessarily consume much time in the preparation. But less voluminous digests can be made and issued more quickly.

Early last spring, officials of this Association conceived the idea of briefly reviewing the labor legislation of 1909, as soon as possible after the adjournment of the various State legislatures. The work of preparation was turned over to the Assistant Secretary, Irene Osgood, who in a carefully arranged pamphlet of forty pages, reviewed the labor legislation of the forty-two states which held legislative sessions during that year. Several thousand copies of this pamphlet were printed and distributed. Its

initial reception, re-inforced by a continual demand for additional copies, indicates the need of something of this kind, and the Association will undertake the publication of such a legislative review each year hereafter.

SUMMARY OF LAWS IN FORCE.

A tabulated summary of Labor Laws in force in this country, so arranged that one may see at a glance which States excel in reasonable requirements and which States are more backward, has been one of the expressed longings of the International Office. The preparation of such tables, even after the facts have been collected, is an arduous undertaking, requiring extreme care and sound judgment on the part of the student. But the work was begun in the belief that the results would amply justify the undertaking.

The first three sections of this summary have been published. A fourth is now in press, and a fifth is in preparation.

INDUSTRIAL EDUCATION.

Prominent members of our organization made the suggestion at a meeting in Boston last May, that this Association should keep in touch with the movement for industrial education, and, if possible, present a study of present legislation bearing on that subject. The suggestion was communicated to Professor Elliott of the University of Wisconsin, who during the next few months prepared for us a classified summary of the existing legislation relative to industrial education in public, elementary and secondary schools. This, as Professor Elliott says in a prefatory note to the pamphlet recently published by this Association, is *timely*, "In this day of many earnest endeavors to adapt the work of our educational system both to the modern requirements for

individual efficiency and to the demands for the new industrial order." At least, we hope this effort may be found of value in helping to crystalize the "progressive consciousness of the new needs of contemporary life which constantly endeavors to embody itself in progressive legislation."

WOMAN'S WORK.

Another subject which has interested the Association in a practical way during the past year, has been the problem of limiting the working hours of women. Our International Association has, in Europe, arranged international treaties which prohibit the night work of women in fourteen countries, and otherwise place maximum limitation upon the hours of labor for females. The question of limiting the working hours of women in this country has been focused since last summer upon the ten-hour law in Illinois. The Association, impressed with the fact that the setting aside of this law in the important industrial State of Illinois, would establish a serious obstacle to the progress of social legislation in America, has done what it could to arouse public attention to the seriousness of the crisis. On October 15th, the Association sent a special circular letter to a selected list of 1,000 Illinois people. This letter was reprinted and distributed by Illinois organizations in furtherance of the campaign for the protection of women.

Under the general head of Woman's Work the American Association, has also distributed to its members, several important pamphlets on this subject. One of these, prepared by Irene Osgood, under the title "Women Workers in Milwaukee Tanneries", and published by the Wisconsin Bureau of Labor, attracted very wide attention. Copies of the Illinois Ten-Hour Law, as well as the report of the Illinois Industrial Commission, with A

Plea for Women Workers, were also mailed out from the Association headquarters. More recently still, the Association has distributed several thousand copies of the pamphlet: "Constitutional Aspects of the Ten-Hour Law", published by the Illinois Department of Labor, but prepared by Ernst Freund, as president of our Illinois State Branch. Professor Freund has also secured as an aid in the oral defense of the Illinois ten-hour law, the services of Attorney William James Calhoun, more recently appointed by President Taft as Minister to China.

Long before the injunction was issued setting aside the ten-hour law in Illinois, and months even before the law was enacted, the American Association had been making a comparative study of the laws which limit the working hours of women. More recently the work was put, for final arrangement and verification, into the hands of Maud Swett, a trained student in this field. The results of this painstaking work, put in graphic form in a pamphlet of sixteen pages, and published by this Association in the middle of December, are now accessible to our members. This work has been undertaken with the conviction that "permanent industrial progress cannot be built upon the physical exhaustion of women." In the work on this topic care has been taken to avoid, so far as possible, duplication of any of the work undertaken and carried to such a splendid conclusion by Josephine Goldmark of the National Consumers' League, and Louis D. Brandeis of Boston. Conscious coöperation between allied organizations should be an important phase of similar undertakings in the future.

CHILD LABOR.

The policy of the American Association with reference to topics of labor legislation already largely cared for by

other organizations, has been one of respectful and glad submission. The field of activity for labor legislation is too large to tempt duplication along that line. With reference to the subject of Child Labor, the Association has felt particularly free from responsibility on account of the splendid work carried on by the older and much better equipped National Child Labor Committee. It did not seem presumptuous, however, for the American Association when called upon by the International Labor Office, to present when it chanced to have the opportunity, a valuable study of child labor legislation from the comparative standpoint. For this undertaking the Association was fortunate in securing the services of Laura Scott, an expert trained by Dr. Charles McCarthy in the Wisconsin Legislative Reference Library. Miss Scott's production, which is now in press, represents months of the most painstaking effort.

ADMINISTRATION OF LABOR LAWS.

A careful study of labor legislation invariably reveals the fact that such legislation has most frequently failed in its purpose on account of defective administration. Any scheme, therefore, which contemplates the extension of the law should at the same time give particular attention to the work of perfecting machinery for the law's enforcement.

As a preliminary to such an effort the Association, during the past year, through the assistance of Charles B. Austin, prepared and published a comparative study of strictly administrative features of the laws of the thirty states having factory inspection departments. This first attempt, while it is not in itself a comparison of effectiveness, but merely a comparison of statutory enactments, suggests the need and points the way for general strengthening of administrative forces. This

study should be regarded as preliminary to a much needed and much more difficult field investigation, which in all probability will have to be made in some of the more backward states before a general advance in effectiveness of law enforcement is secured. It is a difficult task, but we should keep in mind the fact that effective administration is the great problem of the future.

INDUSTRIAL ACCIDENTS AND WORKMEN'S COMPENSATION.

The program of this Association, one year ago, dealt largely with the problem of industrial accidents and workmen's compensation. The papers read at the annual meeting last year, and as published in the second annual report of this Association, have had a strong influence upon this question, which is likely to become the leading topic of labor legislation in America. The demand for copies of last year's report has continued throughout the year, indicating an increasing appreciation of scientific investigation of accidents and of proposed systems of compensation.

The preparation of a special pamphlet on "Employers' Liability" by Crystal Eastman, Secretary of the N. Y. State Branch of our organization, served to stimulate this interest anew. Moreover, during the year, no less than four other pamphlets on the same general subject have been mailed to our members.

At a meeting of the General Administrative Council in April, several speakers emphasized the interest of the membership in Workmen's Compensation, and pointed out the importance of securing uniformity in legislation. Earlier than this, with the conviction that the first important step toward uniform legislation must be taken through greater uniformity in scientific investigation, a definite campaign was instituted for the purpose

of bringing together for discussion those most interested in this important question.

Beginning with the Administrative Council Meeting in Chicago, at which time President Farnam, Secretary Commons and Commissioner McEwen of Minnesota spoke upon this question before the City Club, a public effort was made to pave the way for a conference. Three states, Minnesota, New York and Wisconsin, had special legislative committees at work upon the subject. Secretary Commons made a trip to Minnesota where he discussed plans in detail with the members of that Commission; and the Executive Secretary, while on a trip through the East, urged upon several members of the New York Commission, the importance of uniformity of investigation. Fortunately, both the President and the Secretary of our New York State Branch, were added to this Commission by Governor Hughes, while in Wisconsin frequent conferences at the headquarters of the Association aided still more in bringing about the desired result. In June, Secretary Commons wrote to Mr. Mercer of the Minnesota Commission, urging him to call an Interstate Conference on Workmen's Compensation. The call was issued on July 14th. Thus the way was paved for a meeting which took place at the end of July (29th-31st) in Atlantic City. The results of this conference, which was attended by members of the Minnesota, Wisconsin and New York Commissions, by officials of the State and National Governments, and by experts from various insurance corporations, were most satisfactory. A stronger tendency toward greater care and greater uniformity in investigation was at once apparent, and will, within the next year (no doubt) show itself again after the facts have been gathered and the time has come for the scientific drafting of bills. This

tendency in the direction of greater care and greater uniformity is, of course, welcomed by the Association, since it has the honor of being able to say, without presumption, that its work at least helped to smooth the way to this conclusion.

INDUSTRIAL HYGIENE.

Anyone who has even cut the leaves of the quarterly *Bulletins* of the International Labor Office, must have been impressed by the emphasis placed upon industrial hygiene by the legislators of Europe. The conviction is growing that the labor problem, in one of its most important phases, is really a health problem. In the recognition of this fact American students and law makers should not lag far behind, and this Association has begun a campaign to accelerate the investigation and elimination of occupational diseases.

A little more than a year ago, in October, 1908, a Commission on Industrial Hygiene was organized by and in affiliation with this Association. Dr. Henry Baird Favill of Chicago was made Chairman, and Dr. M. P. Ravenel of the University of Wisconsin, was elected Secretary. The purpose of this special commission is to encourage scientific investigations by both private and public agencies, with the view of securing, through legislation, more healthful surroundings for our work people. Shortly after its organization, members of this commission approached the director of the Russell Sage Foundation in the hope of securing encouragement from that quarter, but failed. In other directions they were more successful. Several members of our Association took a deep interest in the project and drafted plans for an investigation both from the medical and economic viewpoints. One Illinois member made a special contribution to encourage the work, and the United States Bureau of

Labor offered further coöperation. For the purpose of securing wider public attention to this important subject, a bill was drafted, and introduced in the Wisconsin Legislature on February 16th, 1909, providing for an investigation of conditions affecting the health, vitality and industrial efficiency of wage earners. Thousands of copies of this bill, with a brief history of the Association's interest in the subject of industrial hygiene, were circulated in Wisconsin and throughout the United States. The bill came before a joint committee of both houses on March 25th, and members of the Commission from Illinois and Wisconsin appeared in its support. It was reported favorably from the committee by a unanimous vote, but later, owing to a peculiar local financial condition, was killed by the Committee on Claims. Nevertheless, the effort was not without good results, and the echo of its brief existence is still heard from most unexpected quarters.

At the General Administrative Council meeting of this Association in April, the subject of industrial hygiene was again up for discussion and Dr. Ely, the first president of this organization, pronounced it "the most important question before the Association." Dr. Ernst Freund, professor of law in the University of Chicago, declared that "A thorough investigation of industrial hygiene would revolutionize the attitude of our courts with reference to labor legislation." An appropriate resolution was at the same time unanimously adopted, declaring that "The fundamental purpose of labor legislation is the conservation of the human resources of the nation."

In accord with the spirit of this action, the Executive Secretary made a special study of one phase of the subject and drafted a plan for an investigation of one occupa-

tional disease. Guided by the program and accomplishments of the International Association, and careful not to undertake an investigation which might prove too much for the slender support of our organization, it was decided to limit the study for the present to an inquiry into the "Effect of Phosphorus upon the Health of Workers in Match Factories." This work, when once under way, met with ready support. The United States Bureau of Labor had become interested in the same disease, through another investigation, and an arrangement was made for substantial coöperation. The field investigation has been completed, and it is expected that a copy of the report will be placed in the hands of each of our members within a few weeks.

I am convinced that great progress can be made in legislation upon the subject of industrial hygiene. The time is opportune for a consideration of labor problems from the standpoint of health and this Association should follow as far as possible in the line of least resistance in order to accomplish results without unnecessary friction and expense.

STATE BRANCHES.

The preparation and circulation of literature on labor legislation at once raises the question of how best to approach the so-called more *practical* problem of getting legislation. As most of the labor legislation of this country is likely to be of State rather than of national character, it is obvious that special attention should be given to the movement in the various Commonwealths.

At the first Annual Meeting of the Association, in December 1907, an amendment to the Constitution was proposed and adopted, permitting the formation of State Branches. This amendment was incorporated into the

Constitution as Article 5. By its authority, the Illinois State Branch was organized on November 7, 1908.

At the second Annual Meeting of the Association the question of the desirability of further organization along local lines was disputed. It was urged by those who had had experience with local sections of older organizations that it would be far better to continue to emphasize the national side of labor legislation. But the majority decided in favor of organizing State Branches, and within the next few weeks, two were organized. Early in January the Assistant Secretary coöperated with local members in the preliminary work of forming a State Branch in Minnesota, which was finally organized on February 8th. At the same time the Secretary and the President of the Association attended preliminary conferences in New York, which resulted in a public meeting and the organization of the New York Branch on February 19th.

During the month of May, the President and the Executive Secretary made a trip to Boston at the request of local members of the Association, and at a conference on May 14th discussed the feasibility of organizing a New England Branch. It was unanimously agreed, owing to the lateness of the season, that the formal organization of such a branch ought at least to be postponed. However, the work done in New England at that time and since, through a provisional Membership Committee, has resulted in a very satisfactory strengthening of the American Association in New England.

In other States, including Pennsylvania, Ohio, Michigan and Missouri, membership committees were formed and the way prepared for further organization.

The work of the three existing State Branches has been on the whole encouraging.

ILLINOIS STATE BRANCH.

The Illinois Branch held its second annual meeting at Hull House on November 27th. The reports submitted by the President, Ernst Freund, and by the Secretary Luke Grant, indicate a gratifying membership increase during the year, as well as an increasing interest in labor legislation. One of the first acts of the Illinois Branch after it was organized was to send a communication to Governor Deneen, previous to the opening of the last session of the General Assembly, suggesting certain legislative measures which it was desired should be considered by him in his message to the Legislature. Among the subjects suggested for the governor's recommendation to the Legislature were, a measure for industrial safety of employes and sanitation in workshops and factories; stricter supervision of private employment agencies and the strengthening of existing laws designed to prevent the exploitation of the unemployed; the fuller equipment of the office of the labor commissioner so that the Bureau of Labor Statistics might keep the public informed on current events in the industrial world by means of the publication of bi-monthly or quarterly bulletins, and the further study of methods of relieving hardships resulting from industrial accidents.

"We are pleased to report", writes Mr. Grant, "that two of the subjects suggested were adequately dealt with by the Legislature. The health, safety and sanitation law will go into effect January 1, 1910 and is the best law of its kind in the United States. Important changes were also made in the laws relating to employment agencies, and provision was made for the employment of a superintendent to see that the laws are properly enforced.

"Three meetings of the branch were held during last winter and spring while the General Assembly was in

session, in addition to a number of meetings of the executive committee and conferences of the officers as measures came up before the Legislature which appeared to require some action by the branch. The most important meeting of the year was held April 10th, at the rooms of the City Club of Chicago. The chief topic of discussion was industrial insurance and the prevention of industrial accidents. Three resolutions were adopted at this meeting: one presented by Miss Jane Addams protesting against an amendment to the child labor law which was then before the Legislature; one indorsing the industrial commission bill also under consideration by the Legislature, and one introduced by Professor Freund urging that the State of Illinois consider ways and means whereby relief may be afforded workmen, or the dependents of workmen, who might be injured while employed in the construction of deep water ways, where there was no remedy at law."

The same resolutions were afterwards introduced by Secretary Grant in the Chicago Federation of Labor where they were unanimously adopted and the Legislative Committee of that body was instructed to assist in having them carried into effect.

"We are pleased to report", says the Secretary of the Illinois Branch, "that the amendment of the child labor law, which would have permitted the employment of children on the theatrical stage, was defeated; that the industrial commission bill became a law; that the suggestion of Professor Freund was embodied in the committee report on deep water-ways, although the Legislature adjourned without enacting any water way legislation."

The Association was particularly active in support of the measures mentioned, and copies of the resolutions, to-

gether with letters urging support for them, were sent to each Senator and Representative in the General Assembly.

One of the important measures passed by the last General Assembly in Illinois was the ten hour limitation law for working women. The bill was originally introduced as an eight-hour measure, and the Illinois State Branch did not consider it expedient to indorse it in that form. The law went into effect July 1, and two months later its enforcement was restrained by Judge Tuthill on the petition of W. C. Ritchie & Co.,—the same firm which contested the validity of the eight-hour law fifteen years ago. President Freund of the Illinois Branch prepared a circular on the legal phases of the law, which was printed and issued as a special bulletin by the Illinois Bureau of Labor Statistics, and he also gave interviews to the press showing why in the light of increasing knowledge of the evil effects of long hours on women workers, the Supreme Court of Illinois may well reverse its former position and uphold the present law.

During the summer Professor Freund prepared a summary of the labor legislation in the Forty-sixth General Assembly. The summary includes not only the measures which became laws, but also those bills which failed of passage, together with an analysis of each bill. This pamphlet was printed and arrangements were made for its distribution among our members. It was issued as a special bulletin of the State Bureau of Labor Statistics, the compilation and preparation of the material being credited to the Illinois Branch.

This Branch is especially interested in securing legislation dealing with employer's liability and workmen's compensation and the officers believe that Illinois should have a commission to co-operate with the commission

from other states. Professor Freund directed a letter to Governor Deneen requesting him to consider the advisability of including in his call for a special session of the legislature, the creation of such a commission.

The last session of the Illinois Legislature made provision for the continuation of the commission to study occupational diseases and voted an appropriation of \$15,000 to meet the expenses of the commission. Owing to the wording of the resolution providing for the appropriation, the Attorney General gave an opinion that the money could not be used for any purposes other than providing stationery, stenographers, traveling expenses of the members, etc. The hiring of experts to conduct investigations therefore, was prohibited because no funds were available to pay specialists. Without the employment of experts to investigate this field, the purposes of the commission are defeated, for at the present time we have little scientific data on the subject of occupational diseases to form the basis for an adequate law. The attention of Governor Deneen was directed to this palpable error in the appropriation bill and in his call for a special session of the Legislature he included a request that the law be amended. It is now confidently expected that a way out of the difficulty will be found and that the experts engaged by the commission may be able to conduct their investigations without being hampered for lack of funds.

MINNESOTA STATE BRANCH.

The Minnesota State Branch has not held its second annual meeting, but a report from the Secretary, Dr. John Lee Coulter, briefly reviews the activities of the year. The President of the Minnesota State Branch is John H. Gray, head of the department of Political Economy in the University. Other members of the Executive

Committee are George M. Gillette, President of the State Employers' Association, William E. McEwen, State Labor Commissioner and Secretary of the Minnesota Federation of Labor, and Rev. John A. Ryan, author of "A Living Wage", and Professor of Social Sciences at St. Paul Seminary.

At the first public meeting of the Minnesota Branch on February 8, 1909, the following preamble and resolution was adopted:

"Whereas, one of the most important questions before the people of the world at the present time is that of proper compensation for workmen in case of industrial accidents, and

Whereas, the subject has been lately brought forcibly to the attention of the people of Minnesota, and

Whereas, a committee composed of representative employees, employers, and others have presented a memorial to the Honorable State Legislature of this State, with the approval of the State Employers' Association, State Federation of Labor, Governor of the State and others, therefore be it resolved that it is the sentiment of this Association that the Legislature should carry out the recommendations of the said memorial, and should carefully refrain from any hasty solution of this important question, but should appoint a commission to report in two years and provide that as much data as possible should be collected during that period as a basis for such action as may be taken at that time."

It was moved and seconded that copies of this resolution be presented to the joint conference of committees of the Legislature to consider this question. The motion prevailed, and the chairman of the Executive Committee, John H. Gray, was instructed to present the resolution and represent the Association at that meeting.

During the session of the Legislature a great many

bills were introduced bearing upon all possible phases of accidents and diseases of workmen, and employers' liability and workingmen's compensation. The State Labor Department, State Federation of Labor, State Employers' Association, prominent members of the State Bar Association and the Minnesota Branch of the American Association for Labor Legislation stood together in open and active opposition to any piecemeal legislation which might block any systematic study and solution of the problem. "The final outcome", says Dr. Coulter, "was as complete a victory as any person could ask for, viz: creating a commission, clothing the labor bureau with added power, and compelling employers, employees, and liability insurance companies to submit regular reports of all accidents.

"During this fight, legislative committees held open meetings at which members of the Minnesota Branch took an active part. It did not seem best to the Executive Committee to arrange for large meetings held under its auspices, but the members systematically influenced practically every men's club in Minneapolis and St. Paul to have special programs on the subject."

NEW YORK STATE BRANCH.

The New York State Branch held its annual meeting on October 28th. The work of this Branch, since its organization last spring, according to the annual report of its president, Professor Henry R. Seager, of Columbia University, has been largely determined by the success of its maiden effort to secure legislation at Albany. "It was the opinion of the organizers of this Branch", writes President Seager, "that the labor problem most urgently calling for legislation in New York was that connected with employers' liability for industrial accidents. Strong representations were made to the legislature, asking for

the creation of a Commission to investigate this problem. You all know the result of this appeal. The legislature, which had also been urged to create a Commission to study unemployment, compromised by providing an appropriation of \$10,000 for one commission to study employers' liability and unemployment." Governor Hughes showed his appreciation of the part the New York State Branch played in securing this Commission by appointing as members the President and the Secretary of the Branch.

Gratifying as was this result, it immediately put upon the Branch, responsibility for justifying the Governor's selection, by making it possible for his appointees to devote the requisite time to the work of the Commission. As Secretary of the Branch, Miss Eastman was the logical candidate for the position of Secretary of the Commission,—and so all the Commissioners felt. The local Executive Committee decided to secure a special donation to enable the New York Branch to pay Miss Eastman a salary, the donation being given with the clear understanding that her time, so far as it might be needed, should be devoted to the work of the State Commission. The needed donation was obtained, Miss Eastman was made permanent secretary of the Commission at its second meeting, and she and Professor Seager have come so largely to identify their work for the Association with their work for the Commission, that they confess they are not always able to keep them separate in their thoughts.

Although no important legislative step, except the creation of the Commission already referred to, has been taken in New York State since the Branch was organized, the officers think there are many signs that the time is favorable for the realization of a more or less definite program of labor legislation that many of us have at heart. The question of substitution of the system of workmen's compensation for the present Employers' Liability Law,

is already an issue in a half dozen states, and steps have been taken for the calling together at Washington in January of a conference on this subject, at which all the states will be represented. And this is only one indication of the growing appreciation among all classes of the need for changed labor laws. "One of the things that has most impressed me", reports Professor Seager, "since I became a member of the Commission on Employer's Liability and Unemployed is the number of employers who take advanced ground on these questions. The change in the attitude of the younger members of the bar is equally evident to anyone who compares the opinion that representative lawyers now express with those widely held a few years ago. Though it will take some time, this change will inevitably reflect itself more and more in the decisions of the courts with the result that the Chinese wall which our written constitutions have been thought to oppose to desirable labor legislation will be broken down at this point and at that, until our legislatures come to have the same free hand in determining what is demanded by the public good in this field that they enjoy in other countries. The most serious obstacle of all, in my opinion, to rapid advance in the field of labor legislation, is the hesitation which each state naturally evinces in taking the lead in imposing restrictions and regulations that may, at least for a time, put its business classes at a disadvantage in competition with business classes in other states.

This condition, frankly recognized and thus clearly stated, is one of the strongest arguments for greater care and greater uniformity in labor legislation. The recognition of this fact,—that the causes and effects of our labor problems demanding legislative action are largely national in character,—led to the formation of the American Association for Labor Legislation.

FINANCIAL STATEMENT.

The receipts and expenditures of the Association as shown by the Treasurer's report for the year 1909, are summarized in the following items:

GENERAL FUND.

AMERICAN ASSOCIATION FOR LABOR LEGISLATION.

Cash Receipts and Disbursements.

Jan. 1, 1909—Jan. 1, 1910.

Cash Received.	Cash Paid Out.
Balance on hand, 1908... \$700.36	Printing:
Cash received, 1909,	Pamphlets and pro-
By subscriptions 2195.68	grams \$265.35
By contributions..... 787.00	Bulletin of Int. Labor
By refunds 529.69	Office..... 463.80
	Second Annual Report. 127.09
	Stationery 62.90
	Office Supplies 30.02
	Postage 543.04
	Stenographic Services:
	Regular 549.91
	Extra 104.18
	Freight and Express:
	Second Annual Report. 4.11
	Bulletin Int. Labor Of.. 104.86
	General 19.82
	Dues to the Int. Labor
	Office 200.00
	Subscriptions to the Sur-
	vey 143.00
	Salary—Ass'nt Sec..... 810.83
	Miscellaneous Expenses:
	Hall rent—Second Ann.
	Meeting..... 10.00
	Customs duty on <i>Bul-</i>
	<i>letin</i> 192.62
	Preparation of Pam-
	phlets 149.00
	Telegrams 4.15
Total \$4212.73	Total Paid Out..... \$3784.68
	Balance on Hand.... 428.05
Total \$4212.73	Total \$4212.73

Certificate of Auditing Committee.

We hereby certify that we have examined the General Fund, Books, Accounts and Records of the American Association for Labor Legislation and find that the foregoing report of cash receipts and disbursements and balance on hand is correct.

WM. A. SCOTT,
STEPHEN W. GILMAN,
Auditing Committee.

ORGANIZATION FUND.

AMERICAN ASSOCIATION FOR LABOR LEGISLATION.

Cash Receipts and Disbursements.

Feb. 12, 1909—Jan. 1, 1910.

Cash Received.	Cash Paid Out.
By Contribution, March	Printing:
15 \$2000.00	Circulars (Outline, leaf-
By Contribution, Nov. 9. \$2000.00	lets, etc.) \$123.35
	Circular Letters 56.70
	Pamphlets 376.50
	Stationery 79.75
	Stenographic Services ... 13.00
	Salaries 1411.66
	Traveling Expenses 364.79
	Miscellaneous Expenses:
	City Club Bulletin..... 8.10
	Expert assistance on
	"Woman's Work".... 16.25
	Organization, N. Y.
	State Branch 64.20
	Advertising (W. T. U.
	L.) 5.00
Total Received \$4000.00	Total Paid Out \$2519.30
	Balance on Hand..... \$1480.70
Total \$4000.00	Total..... \$4000.00

Certificate of Auditing Committee.

We hereby certify that we have examined the Organization Fund, Books, Accounts and Records of the American Association for Labor Legislation and find that the foregoing report of cash receipts and expenditures and balance on hand is correct.

WM. A. SCOTT,
STEPHEN W. GILMAN,
Auditing Committee.

SUMMARY AND CONCLUSION.

One year ago the total paid membership of this Association was but 271. The membership now is 903. One year ago the financial report showed an expenditure of \$1,134.77, of which \$200 was the annual payment of dues to the International Office. The financial reports for the year 1909, show a total expenditure of \$6,303.98.

In 1908 the work of the Association was conducted without any permanent office, and without even a permanent desk. The work was then directed in occasional hours stolen from other duties. At present, though the Association still occupies extremely crowded and shamefully inadequate office room, the work of the Association now demands the full time of two secretaries, a clerk and two stenographers.

In 1908 but two numbers of the quarterly *Bulletin of the International Office* were distributed to our subscribers. In 1909, six numbers were distributed.

One year ago the publications for the three years of its existence were represented by one Annual Report. The publications of the Association for the year 1909, comprise the Second Annual Report, three leaflets, seven pamphlets, and ten monthly departments in the *Survey* magazine. The Association also mailed to members and others about thirty thousand circulars and letters. In addition to its own publications, the Association during the year 1909, assisted in distributing to its members and others, fifteen pamphlets and articles, to the total number of copies of approximately nine thousand. The total number of copies of circulars and pamphlets and articles distributed in both ways during the year 1909, was approximately 55,000.

Our Association is just beginning to feel and find its way. If, after sufficient experiment, it is found that other

agencies, and particularly the national government, show a tendency to take upon themselves the research and the more solid publication ventures instituted by this Association, such a transfer will, no doubt, be regarded not only as a distinct relief to our Association, but as additional evidence of our usefulness.

It should be mentioned in this connection, that one of the most encouraging developments of the year has been the manifest readiness of private, state and national agencies to coöperate most liberally in this work. Gratitude is due the Wisconsin Legislative Reference Library, the Illinois Department of Labor, the Minnesota Bureau of Labor, and the United States Department of Commerce and Labor, for coöperation in gathering, publishing and distributing material. And special thanks are due, and are here accorded, to the Wisconsin Bureau of Labor Statistics for liberal and timely support when such support was most needed.

It is, of course, apparent that if this Association is to carry to successful fruition the work it has to do, it must have more funds. Believing as strongly as I do in the necessity of a continual educational campaign, in order to keep close behind us that aroused public opinion without which we cannot hope to make permanent progress, I do not believe that, in order to secure more money, it would be wise this year to increase the minimum annual dues. One of the most important parts of our Association work,—indeed, I sometimes think the most important work before this generation is to get the facts, to get the facts in an inviting form, and to get and keep the facts before the people. This cannot be done successfully unless the qualifications for membership are placed upon a thoroughly democratic basis. This need not interfere with the establishment of an imaginary "sliding scale",

which will permit "contributing" and "sustaining" members to give still more liberally to the work of the Association, as many now do. Such contributions have frequently saved our youthful Association from bankruptcy, and they are most gratefully remembered. But they have never been sufficient in number or in amount to warrant the full development of plans in keeping with the big idea back of our organization.

I close this report with the sincere wish and the firm conviction that the American Association for Labor Legislation may count in the coming year, to a still larger extent, upon the loyal and liberal support of a constantly widening group of earnest men and women.

JOHN B. ANDREWS.

PART III.

LABOR LEGISLATION AND ECONOMIC PROGRESS.

HENRY W. FARNAM.

The natural world, if left to itself, is generally in a state of more or less perfect equilibrium. Those plants and those animals survive which are best adapted to their environment; the others perish. Each species has its enemies which prevent any one of them from monopolizing the earth and which, in turn, are held in check by their own enemies. As soon as civilized man steps upon the stage, however, this harmony of nature is disturbed, and the intruder may be positively destructive of those forms of life which are not able to adapt themselves to him or to minister directly to his wants. A good illustration of this is given by Theodore Roosevelt in his "Hunting Trips of a Ranchman" with regard to the buffalo.

"The most striking characteristics of the buffalo," he says, "and those which had been found most useful in maintaining the species, until the white man entered upon the scene, were its phenomenal gregariousness, . . . its massive bulk and unwieldy strength . . . Its toughness and hardy endurance fitted it to contend with purely natural forces; to resist cold and the winter blasts, or the heat of a thirsty summer, to wander away to new pastures when the feed on the old was exhausted, to plunge over broken ground, and to plough its way through snow drifts or quagmires. . . .

"But the introduction of the horse, and shortly after-

wards, the incoming of white hunters carrying long-range rifles, changed all this. The buffaloes' gregarious habits simply rendered them certain to be seen, . . . their speed was not such as to enable them to flee from a horseman; and their size and strength merely made them too clumsy either to escape from or to contend with their foes."¹

This is the first effect of civilized man, but not the last. The book in question was written nearly twenty-five years ago, when the buffalo seemed to be on the point of extermination. Fortunately, as man becomes more enlightened, he begins to realize that in his struggle for the supremacy over nature, he may carry the contest too far for his own good. We now find that somewhat tardily civilized man is trying to save from extinction the few scattered specimens of the bison that have survived, and even by skillful crossing to endow domestic cattle with some of those good qualities of their wild cousins which have enabled them to cope successfully with the climate of the plains through so many generations. Thus the stage of domestication follows the hunting stage of civilization, and the crude and wasteful processes of natural selection are replaced by those of artificial selection.

Like Orlando in the Forest of Arden, civilized man begins the struggle for existence with a drawn sword and a threat.

"He dies that touches any of this fruit
Till I and my affairs are answered."

In time experience teaches him, in the words of the banished duke, that

"Your gentleness shall force
More than your force move us to gentleness."²

¹Theodore Roosevelt, "Hunting Trips of a Ranchman," pp. 244-245.

²"As You Like It." Act II., Scene 7.

The course of man's dealings with nature is paralleled in his dealings with his fellow-men. Almost every new invention, almost every new process creates a power which is susceptible of abuse, or leads to changes in conditions which may be injurious to certain classes or certain interests. The pioneers of industry have much in common with the pioneers of the frontier. Even those improvements which seem altogether good may bring in some incidental evil, which, while not by any means counterbalancing the good, yet makes itself felt as something to be removed. A good example of this is seen in the homespun industry of some of the Scotch isles. The island of Harris has long been famous for the quality of its tweeds. The climate is, however, very wet, and the sheep have been so subject to disease, that it has been the custom to rub them with tar and grease to protect them from the cold. More recently an improved breed of sheep has been introduced which is able to resist the climate, but it is now found that the grease which protected the sheep also improved the quality of the wool, so that the newer fabrics are not as good as the old ones.⁸ This is a common experience, not only in the history of inventions, but in the history of man's efforts to introduce higher forms of economic life and a higher kind of civilization.

The most important step upwards from savagery is to substitute the law of contract for the law of conquest, but as soon as violence is put down there is danger that the physical strength and the courage which were essential to existence in the ruder age will be lost or impaired. New dangers are also possible. If the law decrees that wealth shall be distributed, not as the result of brute force, but through free bargaining among producers,

⁸ Consular Reports, November, 1909.

there is a possibility that the advantage will go, not to the man who produces the most, but to the man who is most unscrupulous in driving a hard bargain. It then becomes necessary to set up a new standard and to prohibit not only positive fraud, but also all contracts which may be so unequal in their operation as to discourage industry and promote trickiness. Without violence, it is possible so to frame a labor contract that the worker shall become virtually the bondsman of the employer. Thus slavery and peonage have to be prohibited as contrary to public policy. But abolish slavery, and you abolish, with the right of exploitation, the obligation of the master to care for the worker in sickness and in old age. Docility and trustfulness, which may have been useful characteristics of the slave, are converted in the freeman into that disregard of the future which we call improvidence, and the superannuated or sick worker, who has made no savings and has no family to care for him, constitutes a new problem. Relieve the sick and the aged by means of private charity or public relief, and you run the risk of developing the institutional pauper and the tramp, those sorry by-products of civilization, who will not support themselves, but whom charity will not suffer to starve, and who may not be put to forced labor without a violation of the constitutional prohibition of involuntary servitude.

These evils, which are observed so frequently in connection with efforts to improve social institutions, lead different minds to quite opposite conclusions. Some, exaggerating the incidental evils of progress, decry all efforts at betterment, and long for the good old times when there were no reformers. Others, realizing strongly the evils which grow up without regulation, think that reform has not been carried far enough and

advocate some extreme remedy such as socialism. In view of the difficulties which seem to attend both action and inaction, we naturally ask, if there is no principle based upon experience which will enable us so to steer the Ship of State as to avoid both the Scylla of conservatism and the Charybdis of radicalism.

In seeking such a principle, the first thing to realize is that we are living in a highly dynamic period of the world's history. We are so accustomed to change, that we sometimes do not realize all that it means or the great contrast which exists between the rate of change of the present day and any rate which has existed in any previous period of the known history of the world. These changes are seen not only in the endless improvements in mechanical processes with which the great inventions of the eighteenth and nineteenth centuries have made us familiar. More recently this spirit of progress has taken hold of what throughout history has been the most conservative of callings, and agriculture is now stimulated and vitalized by the application of science. New types of plants and animals are introduced in order to meet peculiar conditions; new methods of farming are devised, by which dry lands, which have hitherto been considered infertile, are impressed into the service of an increasing population. The really significant thing with regard to these and other improvements is not that they are numerous and far-reaching, but that they are being deliberately planned. They are no longer the happy inspiration of the casual man of genius, they are often the outcome of a course of study deliberately undertaken with a definite end in view. Such establishments as the Carnegie Institution of Washington and the Sage Foundation, the agricultural experiment stations of the several States, and many departments of our universities and schools of

agriculture, are not only pushing forward our knowledge of nature and her processes, but determining in advance the lines on which progress shall be made.

An interesting illustration of the tendency to anticipate discoveries is seen in the recent history of polar exploration. For centuries the difficulties of reaching the North Pole seemed almost insurmountable. One expedition after another had been undertaken only to write a new chapter in the history of failures. When during the summer of 1909, it was announced that two explorers had independently succeeded in accomplishing this feat, it was also disclosed that each had contracted in advance with certain newspapers for the exclusive right to publish an account of the discovery which at the time of making the contract was still problematical. Two things are significant in this episode; the first is the eagerness with which discovery is pursued; the second, the readiness to use a still unmade discovery as the basis of a property right. And if, as now seems probable, one of these expeditions was partly fictitious, this would only make the illustration more striking, as showing the impalpable foundation upon which a property right may be built up. The art of aërial navigation is still in its infancy, and yet an insurance company advertises itself as prepared to underwrite aërial risks. Every one of the fifty or sixty thousand patents applied for in our country in a single year represents a desire on the part of someone to effect a change in methods of production and to use it as the basis of some property right.

If we accept this general fact of change, we must now analyze its manifestations in order to study more closely its bearings upon labor legislation. Professor J. B. Clark, in his suggestive study of "Economic Theory as Applied to Modern Problems", enumerates five elements as

characteristic of a dynamic society: (1) An increase in capital. (2) An increase in population. (3) Changes in methods of production. (4) Changes in methods of organization. (5) Changes in consumers' wants.⁴

If we consider each of these five features of economic progress, we shall see that each one of them involves some new problems affecting labor. Many of these, fortunately, solve themselves; many others do not, and the experience of a century has proved that in, at least, many cases some form of legislation is necessary in order to prevent the incidental evils of progress from being perpetuated and aggravated. Let us take them up seriatim.

1. Increase in capital tends to make large aggregations of wealth, which by their very size weaken the personal element involved in the relation of employer and employed. The simple, almost patriarchal, expression "master and servant", which served as the rubric of the law on these subjects in the time of Blackstone and indeed was not superseded in England as a legal term until 1875, is no longer applicable to modern industry, nor are old methods of bargaining satisfactory. New machinery must be devised to facilitate collective bargaining and to mitigate the effects of collective disagreement.

2. The increase in population often involves a crowding in industrial centers with an increase in disease, which must be dealt with by tenement house laws and sanitary measures. The increase of population combined with modern methods of transportation leads to the amazing migration of modern times, which, in turn, creates new difficulties. To prevent the spread of contagious diseases, to prevent the abuse of the newcomers, some restrictions have to be placed by law, not to stop, but to control this flood of immigration.

⁴ Clark: "Essentials of Economic Theory," pp. 203-206.

3. Changes in the methods of production, involving, as they do, more powerful and more complicated machines, bring many evils. In the early days of the factory system, the displacement of skilled labor by unskilled was the most obvious injury felt by the workers. At the present time we are more concerned, because better acquainted, with the remoter and indirect effects of the age of machinery. We see new causes of accident, new kinds of industrial diseases, combined with a greater difficulty of securing the individual worker against the effects of accident and disease. Long experience has shown that these particular difficulties do not correct themselves, and one of the greatest problems in labor legislation at the present time is, on the one hand, to diminish accidents and disease, and on the other, to provide some form of compensation or some form of insurance for those who are their victims. Still more important, if possible, is the effect of machinery upon children and therefore upon the workers of the future, and this, being comparatively remote and not realized for one or two generations, is the most difficult problem for the individual to solve. Government intervention seems the only agency sufficiently powerful and sufficiently general to save a country from the deterioration of its human capital.

4. Changes in organization tend on the whole to give a new advantage to capital. It is now possible for a single company or combination of companies to spread out over many states or many continents. This, while it makes for efficiency, also creates a power which may be abused and results in a demand for laws putting upon capital new responsibilities in the interests of its employees. It above all points to the necessity of interstate and international labor legislation. With the aid of the International Association for Labor Legislation, a num-

ber of international treaties of great importance have been made, one of the most recent of which is a treaty between France and Great Britain, giving the workers of those countries reciprocal advantages in obtaining compensation for accidents.

5. Changes in consumers' wants create an artificial instability of business, which shows itself in alternating periods of activity and stagnation. The one tends to produce overexertion, the other, unemployment, and each demands legislation.

It will be noticed that in each of the five cases the main purpose of the legislation in question is to prevent some injury to the human beings for whose sake economic progress exists, and on whose efficiency its continuance depends. We should, therefore, add to the five elements of a dynamic society which have been enumerated, a sixth, which has been comparatively neglected in the past, but which may prove in the future to be the most important of all. I refer to an improvement in the quality of the population itself. This is not altogether a dream. The average duration of the human life has within a century been decidedly lengthened in many of the leading countries of the world. In England and Wales, for instance, the average duration of life among males in 1838 to 1854 was $39\frac{9}{10}$ years, in 1891 to 1900, $44\frac{1}{10}$. In Sweden the average duration has increased from $39\frac{5}{10}$ in 1816 to 1840, to $50\frac{9}{10}$ in 1891 to 1900. Our statistics do not enable us to make general statements for the United States as a whole, but in several of the States the same tendency shows itself.⁵

Many diseases and many accidents are now recognized as clearly preventable. There is every reason to believe that by proper care human life can be lengthened, disease

⁵ Fisher: "Report on National Vitality," 1909, pp. 18, 19.

and accidents diminished, and the physical strength of the population improved; but in order to bring about this most important element of progress, the State itself, which alone has an interest extending beyond that of the individual lifetime, must intervene in order to prevent well-recognized causes of retrogression, and also to promote those elements which make for improvement.

In this process, mistakes are pretty sure to be made. Eugenics has not yet reached the position of an exact science. All legislation that is passed with good intentions does not produce the desired results. The point to be emphasized is that economic progress in itself involves inevitably in each of its elements some form of labor legislation. As long as change continues, we must expect that labor legislation will be necessary. If the laws of the Medes and Persians were immutable, it was because their economic life was stagnant. We should not forget, however, that the oriental politicians who are responsible for introducing this tradition into literature invoked the immutability of the law on behalf of a brand new measure of their own devising, the purpose of which was to check reform by casting the reformer into a den of lions. For according to the prophet Daniel, "All the presidents of the kingdom, the governors, and the princes, the counsellors, and the captains, have consulted together to establish a royal statute, and to make a firm decree, that whosoever shall ask a petition of any god or man for thirty days, save of thee, O King, he shall be cast into the den of lions. Now, O King, establish the decree, and sign the writing, that it be not changed, according to the law of the Medes and Persians, which altereth not."⁶ At the present day, there are no more ardent advocats of the law, none who more zealously urge that things be left

⁶ Book of Daniel, Chapter VI., Verses 7, 8.

alone, than those the value of whose property rights rests upon some comparatively recent law, such as a liberal charter or a high import duty.

This conception of labor legislation, if it could be generally entertained by our legislators and the public, would lead to certain important, practical results.

1. Labor legislation would be less in quantity and better in quality. A measure adopted for what seems an emergency is almost always hastily drawn and soon requires amendment. As soon as it is recognized that a certain type of legislation results from permanent conditions, more care will be bestowed upon it, and the changes will be fewer.

2. Legislation would also on the whole be more prompt. Certain general effects of industrial progress are well known by the experience of other states. These are often not corrected, until they have become so flagrant that they are taken up by philanthropists or trades unions, and corrective measures are then passed under pressure without due study. Legislation is often so afraid of crossing its bridges before it comes to them, that it does not keep them in decent repair.

3. Laws would be more uniform, if labor legislation were recognized as resulting from certain general economic conditions which are universal, or nearly so. More care would be taken to secure harmonious action between different countries and different States in the same federation.

4. Labor laws would be less frequently the expression of class feeling. Many bills which excite prejudice on this ground would be recognized as being really in the general interest. The courts, too, might perhaps find it easier to distinguish between enactments which are really class legislation and as such condemned by constitutional

principles, and those laws which, while applying to certain definite groups, are in reality passed for the benefit of all.

5. The recognition of labor legislation as a permanent feature of our statutes would make it more consistent, because the very thought of adapting it to changes in economic conditions would force us to think more of those economic ideals which underlie subconsciously most social legislation, but are not always recognized or steadily followed.

Each great period of the world's history has had some such economic ideal, which, whether or not formulated in words, has become a part of the *mores* of the time and country and has guided the law in its main features. Under the Feudal System, for instance, society was divided into horizontal strata, based mainly on their relation to land and involving specific duties as well as rights. The Guild System dovetailed quite properly with this system, although strictly not a part of it, since under it the mechanics of the cities were classified and their places definitely determined, the crafts themselves being more or less hereditary. Whatever the merits or demerits of this system, it was one of order rather than one of freedom, one of conservatism rather than of progress.

The economic ideal of the United States is very different from this. It may not be easy to define it in a few words, but its most concise expression is perhaps found in that part of the preamble of the Federal Constitution which states, after enumerating certain political purposes, that its object is "to promote the general welfare and secure the blessings of liberty to ourselves and our posterity." Our ideal is clearly not a caste system, nor even a hierarchy of functions such as existed under the Feudal System. It is a system of freedom which implies equality

of opportunity for all. This does not mean anarchy, for it is a liberty which brings blessings. It is not the paper liberty of a phrase. It is, moreover, a liberty of the race, not of the individual. All this implies, therefore, a liberty so regulated as to prevent one individual or one group from abusing their liberty to the harm of others.

This policy, though unfortunately not always realized, is seen in many typical pieces of legislation, both Federal and State. The public land policy of the United States is based upon the idea of putting the land into the hands of small farmers, therefore preventing its monopolization by a few. The Homestead Exemption laws of our States interfere with freedom of contract in the interest of the family. The Federal Government introduced within the first few years of its existence a system of caring for seamen of the merchant marine in case of sickness by means of what would now be called compulsory sick insurance.⁷ This remarkable piece of labor legislation, enacted in 1798, anticipated by nearly ninety years the introduction of general compulsory sick insurance by Germany, showing that even in those early days of weakness and decentralization the United States was ready to practice social politics, when the practicability and the necessity of it was apparent. If a few years earlier Alexander Hamilton advocated a protective tariff, partly on the ground that it would introduce the factory system and thus secure the employment of children "of tender age,"⁸ this was not because of any desire to break down the health of the population, but simply because the evils of the factory system were not appreciated as were the dangers of the sailor's life.

⁷ For a full history of the Marine Hospital Service the writer is indebted to a still unpublished monograph on the subject, written by Dr. A. M. Edwards for the Carnegie Institution.

⁸ Report on Manufactures, 1791.

We are fortunate in this country in having an ideal clearly expressed and pretty generally accepted, and it is this ideal which must give consistency to labor legislation. But it is a consistency of aim, not of words, that we must aim at. A navigator might seem vacillating to a landlubber who observed that he sailed now on the port tack and now on the starboard tack and constantly changed his helm. But through all of the apparent changes he is working steadily against the wind toward his port. Labor legislation must likewise adapt itself to the particular exigencies of the times, maintaining always as its final purpose in the United States, to secure the blessings of liberty for ourselves and our posterity. Its very prohibitions are in the interest of a greater liberty, just as the traffic regulations of a great city put restrictions upon the individual driver for a time in order to secure a freer circulation for the traffic as a whole.

The movement for more intelligent labor legislation is, as our association has often stated, but a part of the great movement for the conservation of our natural resources. But in the construction of the irrigation works which are already reclaiming so many square miles of land and turning bad lands into fertile farms, the first step is the building of a dam. There are few persons so short-sighted as to suppose that these dams are intended to prevent the water from reaching the arid plains. Every one knows perfectly well that they are the very first condition of an adequate water supply. Likewise some restrictive legislation as applied to labor is often the condition of real economic freedom. It means that man is at last learning to apply to himself those principles of domestication, preservation, and improvement which he applied to his live stock, when he emerged from the hunting stage of existence.

CONSTITUTIONAL LIMITATIONS AND LABOR LEGISLATION.

ERNST FREUND

In the development of legal principles twenty-five years is not a very long period. In 1884 the body of constitutional doctrine by which labor legislation has since been judged was practically non-existent and it is consequently a growth of a span of time within the legal memory of most of us. There had been previously a solitary decision of the Supreme Court of Massachusetts¹ in which the Court was obviously a good deal puzzled how to deal with the objections raised, disposing of them in a rather off-hand and not altogether satisfactory fashion. This dated back as far as 1876. In 1877 the decision of the Federal Supreme Court in the *Granger* cases² established the principle of public control of economic interests although without a proper appreciation of the limits that have since been recognized. The control was also asserted only with reference to businesses affected with a public interest, and a significant observation fell from Ch. J. Waite, that the Constitution does not confer power upon the whole people to control rights which are purely and exclusively private.

The decision of the New York Court of Appeals in the *Tenement Labor Case* in 1885,³ was the first to take a decided stand against the power of the State in a case where labor was involved. The freedom in that case, however, was asserted in favor of the individual work-

¹ *Com. v. Hamilton Mfg. Co.*, 120 Mass. 383.

² *Munn v. Illinois* 94 U. S. 113, and cases following.

³ *In re Jacobs* 98 N. Y. 98.

man and the relation between employer and employees was not directly discussed. The novel doctrine of freedom of contract between capital and labor was inaugurated in 1886 by two decisions; one from Pennsylvania,⁴ the other from Illinois.⁵ It is not until the 90's that the judicial mind can be said to be aroused to the realization that important constitutional problems are involved in labor legislation. Yet the same period of time has been long enough to see nearly all the judges who pronounced the leading decisions in the respective States pass from the bench and in many instances the entire membership of the court has changed.

What then is the legacy which this past generation of judges has bequeathed to their successors of the present day?

A survey of judicial decisions on labor legislation may be summarized as follows: The great mass of labor statutes have not been contested in the courts. This by itself must not be taken to mean that they have been accepted as valid, for it is notorious that a great many laws have never been enforced. Of these that have been questioned in the courts practically all that had any immediate bearing on safety, sanitation, or decency, have been sustained, the few exceptions being due to special features not going to the root of the law.⁶ Neither the question of the control or restraint of organizations, nor that of liability or compensation or insurance, nor that of arbitration, have as yet been considered by the courts to any extent from a constitutional point of view. The controversy has resolved mainly around three subjects: the protection of labor organizations, the method of payment

⁴ *Godcharles v. Wigeman* 113 Pa. St. 431.

⁵ *Millett v. People* 117 Ill. 294.

⁶ See, e. g., *Starne v. People* 222 Ill. 189.

of wages, the limitation of hours of labor. There have been in the neighborhood of twenty decisions declaring as many statutes on those points unconstitutional, and while, with reference at least to the two subjects last mentioned, there have been weighty decisions and opinions the other way so that it is difficult to assign a distinct preponderance of authority to either side, it undeniable that the adverse decisions coming from many different sections of the country have produced a great impression upon the legal profession and the community at large and created a general sense of uncertainty as to the extent of permissible legislation.

It is important to consider to what extent this impression is justified.

I shall pass over the cases dealing with the protection of labor organizations against coercion or discrimination practised on the part of employers in hiring or discharging workmen, not because the problem involved in the legislation is without interest or importance, but because, as the acts were framed or as the courts interpreted them, the issue has been narrowed down to a point where it is deprived of deeper significance.

If this legislation necessarily means that a relation is to be forced upon the employer which the employee is free to let alone or discontinue, it is not surprising that the courts have, with practical unanimity, pronounced against its validity. It deserves further consideration whether it is not possible to frame a valid law which will respect the right of the employer to form and sever relations of employment with the same freedom as that enjoyed by the employee, and will yet compel him to maintain at least an outward attitude of neutrality toward labor organizations by forbidding offensive threats and other forms of coercion and intimidation either to harm or to benefit them.

The cases concerning truck and other wage payment acts have been conspicuous for the part which they have paid in the judicial history of labor legislation, those concerning hours of labor for the general interest which they have drawn to the issues involved. Both presented the issues between individual liberty and the power of public regulation, but, as the further discussion will show, in very different aspects, although it is customary to cite them indiscriminately.

It will be of advantage to recall to the mind very briefly the course of the judicial decisions. The keynote was struck by the brief and pointed denunciation of a store order act which is found in the first case already referred to, decided by the Supreme Court of Pennsylvania.⁷ The Act was declared to be an infringement alike of the right of the employer and the employee; "More than this, it is an insulting attempt to put the laborer under a legislative tutelage which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States. He may sell his labor for what he thinks best, whether money or goods, just as his employer may sell his iron or coal, and any and every law that proposes to prevent him from so doing is an infringement of his constitutional privileges and consequently vicious and void."

The cases in Illinois involving coal weighing, store order, and weekly payment legislation, were less pronounced.⁸ In annulling the statutes in question the elements of discrimination which the court found in them were chiefly relied upon. The insistence upon the freedom of contract, however, which was at first subordinate, was

⁷ *Godcharles v. Wigeman* 113 Pa. St. 431.

⁸ *Millet v. People* 117 Ill. 294; *Frorer v. People* 141 Ill. 171; *Braceville Coal Co. v. People* 147 Ill. 66; *Ramsey v. People* 142 Ill. 380; *Harding v. People* 160 Ill. 459.

gradually more emphasized and finally the Supreme Court declared it to have been a controlling feature of those decisions.⁹ West Virginia and Indiana have been uncertain in their position and their decisions are difficult to reconcile with each other. In both States the latest rulings are favorable to the legislation, but with qualifications.¹⁰ Missouri in 1893, against a strong dissent, condemned a store order act, likewise relying mainly upon unjustifiable discrimination.¹¹ But it took the broader ground of constitutional liberty when the legislation was made general and was again contested.¹² Decisions condemning the attempt to control the method or time of payment of wages are found moreover in Ohio,¹³ Kansas¹⁴, and Texas.¹⁵ Against these must be set the authority of the United States Supreme Court,¹⁶ which in two decisions has strongly asserted the legislative power to protect the workman against methods of paying or computing his wages which may operate to his disadvantage. The same position is taken by a number of state courts,¹⁷ but it should be observed that Missouri maintained its ground after the decision of the Supreme Court of the

⁹ *Vogel v. Pekoe* 157 Ill. 339.

¹⁰ *State v. Fire Creek Co.* 33 W. Va. 188; *Peel Splint Coal Co. v. State* 36 W. Va. 802; *Hancock v. Yaden* 121 Ind. 366; *Republic Iron & Steel Co. v. State* 160 Ind. 379; *Seeleyville Coal & Mining Co. v. McGlosson* 166 Ind. 561.

¹¹ *State v. Loomis* 115 Mo. 307.

¹² *State v. Missouri Tie & Timber Co.* 181 Mo. 536.

¹³ *Re Preston* 63 Oh. St. 428.

¹⁴ *State v. Haun* 61 Kan. 146.

¹⁵ *Jordan v. State* 51 Tex. Cr. 531.

¹⁶ *Knoxville Iron Co. v. Harbison* 183 U. S. 13, aff'g 103 Tenn. 421; *McLean v. Arkansas* 211 U. S. 539.

¹⁷ Opinions of Justices in *Massachusetts* 163 Mass. 589; *Colorado*, 23 Col. 504; *South Carolina*, 47 S. E. 695; *Washington*, 88 Pac. 212; *Vermont*, 64 Atl. 1091. There are decisions sustaining the legislation with reference to corporations in *Arkansas*, *Maryland* and *Rhode Island*.

United States had been rendered. It would indeed be futile to ignore the trend of judicial opinion which is represented in the holdings which are adverse to this kind of legislation, or to dispose of the matter by attempting to establish a preponderance of authority against them by simply counting up the number of decisions on either side.

The decisions regarding hours of labor stand as follows:

In 1876 Massachusetts sustained a ten-hour day for women;¹⁸ Nebraska annulled a general ten-hour day (subject to certain exceptions) in 1894¹⁹, and Illinois, an eight-hour day for women in 1895;²⁰ Utah in 1896 sustained an eight-hour day for mines and smelting works.²¹ This was confirmed by the United States Supreme Court in 1898,²² but in 1899 the same legislation was declared unconstitutional in Colorado.²³ In 1900 an inferior court in Pennsylvania sustained a twelve-hour day for women, limited to 60 hours per week.²⁴ In 1902 Nebraska and Washington sustained ten-hour days for women.²⁵ In 1903 Missouri sustained an eight-hour day for mines,²⁶ and in 1904 a similar decision was rendered in Nevada.²⁷ In 1904 New York sustained a ten-hour day for bakers,²⁸ but was reversed by the United States Supreme Court which declared the law unconstitutional

¹⁸ *Com. v. Hamilton Mfg. Co.* 120 Mass. 383.

¹⁹ *Low. v. Rees Printing Co.* 41 Neb. 127.

²⁰ *Ritchie v. People* 155 Ill. 98.

²¹ 14 Utah 71, 96.

²² *Holden v. Hardy* 169 U. S. 366.

²³ *Re Morgan* 26 Colo. 415.

²⁴ *Com. v. Beattie* 15 Pa. Super 5.

²⁵ *Wenham v. State* 65 Neb. 400; *State v. Buchanan* 29 Wash. 603.

²⁶ *State v. Cantwell* 179 Mo. 245.

²⁷ *Re Boyce* 27 Nev. 299.

²⁸ *People v. Lochner* 177 N. Y. 145.

in 1905.²⁹ A ten-hour day for women was sustained in Oregon in 1906;³⁰ but a law forbidding the night labor of women was declared unconstitutional in New York in 1907.³¹ In the following year, however, the decision in the Oregon case was affirmed by the Federal Supreme Court.³² A ten-hour day law is now before the Illinois Supreme Court. The decisions stand eleven to five in favor of regulation, in the United States Supreme Court two to one; with regard to women the proportion is six to two; with regard to men, five to three. It is moreover proper to advert to some facts which bear upon the adverse decisions. In Nebraska the unfavorable ruling is offset by a later one that is favorable. The decision in Colorado was followed by a constitutional amendment which would leave a new law subject only to the Federal Constitution, which has been construed in favor of it. The decision on the night work of women in New York was dictated by submission to the supposed doctrine of the United States Supreme Court, the decision of that court in the case from Oregon not having then been rendered. And with reference to the first case from Illinois, it might be deemed advisable to suspend judgment until the pending case shall be decided. Under these circumstances there might be some temptation to make light of the decisions adverse to the legislative power. In view of the position taken by the Federal Supreme Court with reference to the bakers' ten-hour law, this would be obviously a mistake. And it is to be noted particularly that there is not one among the decisions which have sustained this legislation that does not clearly intimate that if the legislature should overstep certain

²⁹ *Lochner v. New York* 198 U. S. 45.

³⁰ *State v. Muller* 48 Or. 252.

³¹ *People v. Williams* 189 N. Y. 131.

³² *Muller v. Oregon* 208 U. S. 412.

not very clearly defined limits in this form of legislation, the courts would be bound to afford relief.

It is this general adhesion to the principle of limitation and control which is significant. Its recognition implies a fundamental difference between the European and our conception of legislative power. In all civilized countries the legislature acknowledges itself bound to the observance of certain fundamental principles of individual right, and although without judicial sanction, these principles are on the whole scrupulously and inviolably respected. But these principles are not supposed to include the acceptance of any theory of economic liberty. However firmly economic principles may be adhered to, they are still regarded as matters of policy and not of right, and hence within the acknowledged control of the legislature.

There is no evidence whatever to indicate that, until within a relatively recent period, our general constitutional theory of legislative power was different, except that, through the exercise of a power nowhere conferred in express terms, the judicial sanction which had been lacking in Europe had to come to be supplied.

Where fundamental rights were sought to be asserted against the exercise of general legislative power, they were invariably associated with the impairment of the obligation of contracts, which implied a vested right. The standard treatises on constitutional law contained no suggestion that the due process clauses could be relied upon to build up new limitations, and when Mr. Justice Field in his dissenting opinion in *Munn v. Illinois* contended for a limitation of the legislative power upon this basis, he was in a position to cite any authority in support of his view.

It was, therefore, an innovation upon established con-

stitutional doctrine when the labor decisions recognized traditional immunities from public control as positive and primary constitutional rights in the face of which legislation would have to justify itself before the courts by showing some affirmative ground of interference.

The supposed advance or gain consisted in extending the protection previously accorded only to the vested right of property, to a merely potential right, the capacity to earn, to use one's faculties for individual advancement—on the face of it a principle of strong democratic implication. This implication was further emphasized by using the phrase that labor was property. The general formula, however, under which the doctrine was proclaimed was that of freedom of contract.

The terms used were calculated to convey the impression that the rights involved were those of the workman as well as of the employer. This is not entirely without plausibility as far as hours of labor are concerned;²⁸ with reference to the wage payment acts it is an obvious fallacy, unless the liberty to compete for employment upon unfavorable terms be regarded as a valuable right.

Payment at frequent intervals or redemption of store orders in cash is a pure benefit, and in having the right to this benefit made inalienable, the workman surrenders absolutely nothing except through the remote contingency that the obligations which the law imposes upon the employer, may deter him from entering the business or drive him into insolvency, and that consequently the opportunity to earn a living may be diminished. Where an arrangement operates necessarily to the detriment of one party of the contract, its prohibition cannot in any just

²⁸ That even organized labor may have an interest in not having hours of labor reduced by law, is shown by the opposition of strong sections of English coal miners to the introduction of the eight-hour law. See Ashley, *Adjustment of Wages*, p. 80-82.

sense be denounced as an infringement upon his liberty. Under such circumstances to proclaim a freedom of contract is a misleading phrase which obscures the real issue involved in this legislation.

The only real right at issue in the wage payment acts is that of the employer, the right of the owner of a business to direct its internal arrangements according to his own discretion.

Let us remember that a century after the beginning of factory legislation, American courts questioned whether the police power was properly exercised where there was no danger except to employees who voluntarily incurred it,⁸⁴ that the same idea is still potent in the law of liability, that the State even now does not undertake to regulate purely domestic arrangements, although those exposed to the consequences of mismanagement and neglect do not enter voluntarily and are not free to escape, and that as a matter of history the law of employment has grown out of that of domestic control, and we may understand something of the spirit that says: The gates are mine to open as the gates are mine to close, and I set my house in order.

There can of course today be no reasonable doubt of the right of the State to legislate under the old established heads of the police power, for the protection of the em-

⁸⁴ Re Morgan 26 Col. 415. "How can an alleged law that purports to be the result of an exercise of the police power, be such in reality, when it has for its only object, not the protection of others or the public health, safety, morals or general welfare, but the welfare of him whose act is prohibited, when, if committed, it will injure him who commits it and him only?"

In re Jacobs 98 N. Y. 98, "To justify this law it would not be sufficient that the use of tobacco may be injurious to some persons or that its manipulation may be injurious to those who are engaged in its preparation and manufacture." Quoted with approval in *Ritchie v. People* 155 Ill. 98.

ployees of the business as well as of the general public, and these would include not only safety, health, morals and decency, but also the protection against fraud, and certain forms of oppression and exploitation which the history of legislation has treated as equivalent to fraud.

If it were possible to establish that the various forms of statutes relating to the payment of wages were aimed merely at the suppression of fraudulent or unconscionable practices, they would clearly fall within the principle of the traditional exercise of the police power and the case would be plain. With reference to truck legislation, this view was strongly and ably pressed in a dissenting opinion delivered in the first Missouri case, and the antiquity of this legislation which reaches back to the middle of the fifteenth century indicates the existence of widespread and old grievances in this matter. There is also considerable evidence tending to show that the coal weighing acts were occasioned by the prevalence of methods which were at least capable of being abused to the prejudice of the mine workers. From this point of view it would be quite impossible to support the denunciation of this legislation, so far as its general principle is concerned, upon any consistent theory.

Without very much fuller data than seem to be available concerning conditions in different industries and localities, it is difficult to pass final judgment on the character and effect of the practices which the statutes sought to abolish.⁸⁵ With reference to the requirement of the weekly or bi-weekly payment of wages especially it must be observed that the customary practice of longer intervals of payment not only could not in any proper

⁸⁵ There is some testimony as to conditions in the Colorado mining industry in the Report of the Industrial Commission, vol. 12, LXV-LXXII; as to Illinois, see the Report of Bureau of Labor Statistics 1890, Appendix.

sense be termed an abuse or form of oppression, but that the new requirement, where sustained, in many cases worked such hardship that its rigorous enforcement proved at first impracticable.⁸⁶

However this may be, the controlling fact for the purpose of understanding the decisions is that the courts declined to see in the forbidden practices merely an unconscionable form of oppression or exploitation, but treated the matter as one of fair controversy between employer and employee.

The legitimacy of this point of view assumed or conceded, the conflict of decisions turns upon a very important issue. The problem would be this: If the old established landmarks of the police power are abandoned, at what point is the right of the owner to control his own business and the relation to his employees secure from legislative interference?

The Granger cases had established the principles that certain classes of business of a monopolistic character were subject to control in the economic interest of the general community.

Was there an analogous principle according to which the employment of labor might be regulated in the economic interest of the employees? To some of our courts this undoubtedly seemed to be the issue involved in the legislation, the validity of which was contested before them, and it is easy to gather from the tone of the decisions that they considered a determined resistance to the new principle necessary. Some of the adverse decisions certainly lend themselves to the construction that the principle was repudiated without any qualification. In annulling the statutory requirements, they did not rely upon the hardship or injustice they inflicted upon

⁸⁶ See New York Factory Inspectors Report, 1890, p. 102, 103.

the employers. The points in which the legislature had sought to impose terms upon the contract of employment had not touched any very vital elements in the relation. In Illinois, where the legislation was chiefly aimed at conditions in the coal mines, all the points successfully contested before the courts were subsequently conceded to the miners by the free agreement of the operators. This very course of development, however, shows that there was no imperative need of legislative interference.

On the other hand, the courts which have sustained the statutes in question have done so in a half-hearted way without committing themselves to more than the particular provisions absolutely required. They stand apparently upon no principle but the equities of the legislation, and while recognizing limitations, refuse to define them. It would be pure speculation to attempt to predict upon what principles limitations will be eventually worked out. The difficulty of assigning limits to the power, once it is recognized, may serve to explain the uncompromising stand taken against its recognition at the outset in so many jurisdictions.

Under a system of elective judges holding office for fixed terms, it is at least a fair presumption that a principle involving questions of public policy cannot gain a strong foothold if squarely opposed to generally prevailing notions of justice. More than once in recent times the courts have spoken of the inequality between the parties to the labor contract as justifying legislative interference. If this inequality were hopeless or permanent, the so-called doctrine of freedom of contract would be opposed to every principle of social justice. If it can be maintained, it is only because there is some possibility of contracting on equal terms through the power of collective bargaining. Constitutional limita-

tions upon the power to legislate in the interest of labor would, in other words, be impracticable were it not for the fact that organization furnishes a substitute for legislation.

Two questions suggest themselves in this connection, which at the same time may demand an answer :

1. If the adjustment of labor difficulties is to be left entirely to the power of combination, will not the State be ultimately compelled to have a voice in the control of its organization? We have seen that in recent years the political party has thus been treated as an instrument of government, and in connection with the machinery of the election laws has become an object of legal regulation. If the labor organization is in a similar way essential to the working of the industrial system, a similar result may have to follow. State regulation may thus come at this point if repudiated at the other.

2. How should the attitude of the State be affected by the absence of organization? Mr. Justice Brewer, in the Oregon case, seemed inclined to assign to women an inferior political status, relying upon their dependent nature and other temperamental peculiarities. It would have been more satisfactory if he had pointed out that the industrial work of women, owing to the dominating influence of domestic functions or prospects, is of an adventitious rather than of a professional character, and that consequently the inducement and the opportunity for organization is seriously diminished. An argument for larger control might be placed on this ground, to which women could take no just exception. Similiar considerations might apply in the other classes of labor which, owing to peculiar conditions, must remain without effective organization, and the exceptional treatment of sailors may be explained upon this basis.

There are moreover, two conditions implied in the acceptance of collective voluntary effort as a substitute for legislation: one, that it prove equal to the adequate performance of its functions, the other, that the power of organization be not used in such a manner as to make the substitution of the power of the state a practical necessity.

These are serious but undeniable qualifications attaching to the operation of the prevailing constitutional theory.

If there could be any serious doubt of the hold which this theory has upon our courts, it would be dispelled by a study of the decisions concerning hours of labor. Contrary to the impression produced by the variety of rulings, these cases have given rise to no serious conflict of principles. The courts seem unanimous in the view that the right of the workman to utilize his capacity for work is a valuable constitutional right which will yield to statutory restraints, where excessive labor involves some appreciable danger to the particular class of employees or to the community, but not where it is only a question of realizing those aims and ideals which are involved in the eight-hour day.

The conflict of decisions seems to be entirely due to the manner in which this principle is applied. Conceding that it requires some tangible element of danger to compel a reduction of hours of labor, the existence or non-existence of this danger is a question of fact. The fact may be notorious, or the relevant conditions may be doubtful and obscure, and ascertainable only by special study and observation. It is the latter contingency which creates the whole difficulty in this branch of labor legislation.

A theory has gained considerable currency according

to which the courts judge of the validity of the grounds upon which legislation is enacted, but the actual existence of the conditions which give the abstract ground concrete reality—the exigency—is a matter for the legislature to determine.³⁷

The faithful application of this theory would in many cases amount to a total surrender of judicial control. It would only be necessary to entitle an act for the limitation of hours of labor as an act to safeguard the health of those engaged in it, or to make a recital to that effect, in order to ensure the validity of the act in all cases in which the maximum number of hours was not absurdly low. Would it be seriously contended that such a title or recital would have saved the women's eighth-hour law in Illinois, or the bakers' ten-hour law in the Supreme Court of the United States? It certainly did not help the tenement labor law in New York, that it designated itself as an act to improve the public health, and in the *Lochner* case the Supreme Court expressly denies that it is bound by the proclaimed purpose of the statute. No other construction can be placed upon these decisions than that the courts assume the power to look into the question of fact.

Concede that there are constitutional rights which should not be impaired unless some danger to the public welfare demands it, concede the possibility of the enactment of measures impairing these rights although the danger does not in fact exist, and it follows that the judicial protection of constitutional rights may, under circumstances, involve the questioning of the legislative judgment which is implied in the passage of the statute.

³⁷ It was first enumerated by the Supreme Court of Illinois in *Lake View v. Rose Hill Cemetery Co.* 70 Ill. 91, 195: "As a general proposition it may be stated it is the province of the law making power to determine when the exigency exists calling into exercise this (the police) power. What are the subjects of its exercise, is clearly a judicial question."

And every one knows that the supposed contingency is not wholly imaginary. The theory of the conclusiveness of the legislative finding of fact, therefore, not only is not followed, but it can not be followed, if constitutional rights are to be effectually protected by the courts.

The requirement of due process is now generally applied to legislation. Were it applied in its original and proper sense, it would mean that the legislature must hear and determine with at least some of the guaranties of impartiality that are supposed to belong to judicial procedure. That would not be an extraordinary demand, and perhaps at some future time the legislature will voluntarily satisfy it. But as long as, under the constitutions, the legislative bodies have absolute control over their own rules, the courts obviously cannot set up any procedural standards for legislative action upon compliance with which they may insist. There is consequently no formal test by which the courts can judge the fairness of the legislative judgment. Upon what basis then may they exercise their control, if there is serious doubt as to the reality of the exigency? The question presents a peculiar and, in a manner, unprecedented problem. The courts are required to take cognizance of questions of fact, which are not so notorious that judicial notice may be taken of them, and which yet cannot be subject to the ordinary rules of evidence since they are part of the law of the case. The testimony of experts has in some cases been rejected. "If the constitutionality of all laws enacted for the promotion of public health and safety can be assailed in this manner," says the Supreme Court of Missouri *v. Cantwell*, 179 Mo. 245, "truly and sadly would it be declared that our laws rest upon a very weak and unstable foundation."⁸⁸

⁸⁸ Expert testimony was admitted in the Oleomargarine case in New York: *People v. Marx*, 99 N. Y. 377.

Conceivably the court might with the aid of counsel enter upon an independent investigation of the relevant facts and conditions, and determine for itself the preponderance of evidence as to the existence or non-existence of the exigency. Assuming that the legislative conclusion is not to be trusted implicitly, and considering that it is the obscure and half understood agencies, concerning which it is easiest to create exaggerated impressions and apprehensions, and which can best be made to serve special interests, such a course would perhaps furnish the only adequate protection to private rights. However this is not the practice, and in many cases would be impracticable. The courts could not command the necessary funds for an independent examination, and the result would be that the more resourceful of the two parties would succeed in presenting the stronger case. Something less must therefore be sufficient.

But why should not the courts demand in cases of genuine doubt, that the legislative judgment be supported by a respectable body of fact and opinion accessible to the public, and sufficient in strength that it might reasonably have persuaded the legislature of the existence of the exigency? Such a course would furnish a safeguard, not adequate in all cases, yet sufficient to protect against a gross abuse of power, and the best available under the circumstances. The significance of the briefs of Mr. Louis Brandeis in the women's ten-hour cases lies in the compliance with this unexpressed demand.

For the present, however, there is no certain standard as to what the courts require or even as to whether they require any evidence. The Supreme Court of the United States in *Holden v. Hardy*, the Utah eight-hour case, speaks of "reasonable grounds for be-

lieving that the legislative determination is supported by the facts." But it does not appear how these reasonable grounds are to be made manifest. And as long as this is a matter of speculation there must be a considerable amount of arbitrariness in the exercise of judicial control. Judicial may be substituted for legislative conjecture, and it is quite as possible that right legislation will be annulled as that wrong legislation will be sustained. After the eight-hour law for miners had been sustained, the disapproval of the ten-hour law for bakers was, to say the least, a grave inconsistency.

The course of decisions in the matter of hours of labor reveals a judicial censorship which is based upon no fixed principle, and which, however conscientiously exercised, cannot be expected to inspire that confidence which is essential to the well working of judicial institutions. The substitution of some intelligible and uniform principle of control is therefore a requirement of policy as well as of justice. The analogy of the appellate review of judicial decisions of fact suggests such a principle, approved by long experience. Applied to the statutes in question, it would mean that there must have been evidence of facts within the reach of the legislature sufficient to support its judgment that an exigency existed for its interference. Such a test would not be unduly rigorous; and its effect upon legislation itself could not be otherwise than salutary.⁸⁹

For the protection of constitutional rights such a prin-

⁸⁹The same theory of judicial control might also be applied to the problem of special legislation. In most cases it is entirely a question of fact whether there is invalid discrimination or valid classification. If it were understood that the need of differentiation must be established to the satisfaction of the courts, much of the prevailing uncertainty apparent and arbitrariness of this phase of constitutional law would disappear.

ciple would be more important than the insistence upon those limitations of a more substantive character which within so recent a period have sought to crystallize economic theories into rules of constitutional law.

In the case of *Muller v. Oregon*, the court declared it to be the peculiar nature of a written constitution, that it places in unchanging form limitations upon legislative action and gives a permanence and stability to popular government which otherwise would be lacking. The applicability of this observation to the limitations upon labor legislation may well be doubted.

These limitations are entirely the product of judicial action. They may be supposed to have been created in conformity to widespread and ruling convictions as to the nature of our institutions, but these convictions bear no guaranty of permanence.

Our views on social relations and public control may undergo considerable changes. A certain standard of living may come to seem as important as the preservation of health; industrial employment may become affected with a public interest, and regulation may supersede contract as contract has superceded status.

If such changes come it will require no constitutional amendment to give them relief. It has, perhaps, been a matter of deliberate judicial policy that this branch of the law has been left the least exact in our constitutional system; not one of the principles of limitation has been formulated in so explicit a manner that its abandonment would require much more than the familiar process of distinguishing precedents. All that is vague, shifting or contradictory in the present doctrines will facilitate their modification or abandonment, if necessary, so that there will be no difficulty in accommodating the substantive content of constitutional rights to altered social or economic conceptions.

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And it is quite possible that after another quarter of a century the limitations which our courts treat today as fixed and essential requirements of American institutions, will appear to have been an interesting, perhaps an inevitable, but after all a merely passing phase of our constitutional development.

THE PROBLEMS OF LABOR LEGISLATION UNDER OUR FEDERAL CONSTITUTION

FREDERICK N. JUDSON

The Labor Question.

"Labor legislation", in its narrower sense of legislation directly effecting the relations of employer and employee, is the direct outgrowth of modern industrial conditions. When our Federal Constitution was adopted, the labor question in any modern sense was unknown in the United States, in England or on the Continent of Europe. In England the Statute of Apprentices, enacted in 1564, in the reign of Queen Elizabeth, whereunder wages were fixed by the magistrate, was not repealed till 1814. The advanced thinkers of that time, that is, of the early years of the 19th Century, imbued with the philosophy of Adam Smith and his followers, and including those who had the interests of the working class most at heart, believed that the removal of mediæval restrictions was all that was needed for the welfare of mankind. In France the abolition of the mediæval guilds was one of the first steps in the revolution; and this, enacted against the opposition of the privileged orders, was welcomed by the Parisian workmen as the dawn of a happier day. It was at this time that the inventions of Hargrave, Arkwright and Watt led speedily to the revolution of the manufacturing industries of the world. The introduction of machinery driven by steam and the consequent concentration of great manufacturing plants and the division of labor, established the so-called factory system; and the trend to combination under the facilities

afforded by corporate organization, which has had such tremendous influence in recent times, is too familiar to need recital.

The abolition of the mediæval restrictions, while necessitated by the industrial development, did not realize the sanguine anticipations of the betterment of the conditions of the laboring masses. In the fierce and unregulated competition which followed, a few of the laboring class of exceptional capacity, rose to the position of employers; but the masses were depressed under the new conditions of concentrated industry. The unregulated employment of women and children resulted in abuses which shocked the people, and brought about the beginning of the so-called Labor Legislation. The Factory Acts, under the leadership of Lord Shaftsbury, established the principle not only for England, but for the civilized world that the plane of human competition should be elevated by the State control and regulation of the employment of women and children. The Labor Legislation of England, indeed of Continental Europe, as well as the states of this country, has advanced far beyond this. It has come to modern times to include any statute which in any way affects the labor contract, that is, the relation of the employer to the employed. It has extended to the specific regulation of certain hazardous employments, the length of the day's work, the sanitary condition of workshops and mines, with inspection by public authority, the prohibition of prison labor in competition with outside labor, the regulation of the time of payment of employees, and the preference of labor debts in case of insolvency of the employer. In England, early in the century, the so-called conspiracy acts which interfered with the rights of the working men by combination to better their own condition, were repealed. In more modern times, in this

country, we have had a demand for legislation abridging the right of the employer in the regulation of the condition of labor, and for the exemption of laborers from statutes enacted against combinations in industry. In England, recently, labor unions have been relieved from liability for injuries inflicted by strikes.

Employers' Liability.

But the latest development of labor legislation is in relation to the employee's right to compensation for injuries suffered in the hazards of his employment. Under the rule of the common law, the employer is responsible to his employee when the injury results from his own negligence, but not where the injury results from the negligence of another employee in the common service. The fellow servant rule was not recognized on the continent of Europe, but became established in our common law at the very time that the introduction of the factory system revolutionized the conditions of employment.

Under modern conditions it has become impossible for the workman to protect himself against negligence of his fellow servant in another department of the common business, and this anomaly has resulted in modifications of the common employment rule in favor of the employees both by judicial decisions and by statute. The minute subdivisions of labor in the great centralized establishments of modern times, and in our great railroad systems, and the introduction of complicated power driven machinery, where a great number of employees are employed in different branches of one industry, have involved a vast increase of hazard to the workman and have created conditions as far as possible removed from the comparatively simple relations existing when the fellow servant rule was first understood. The elimination

of the personality of an individual employer, and the all but universal substitution therefor of an impersonal corporate control in industrial enterprise have had far reaching results in the relation of employer and employee.

The defense of common employment, as is well known to lawyers, is not looked upon with favor by juries, and it is materially modified in practice with different degrees in different jurisdictions, by the so-called vice-principle rule, whereunder the negligence of the representative of the principle is not assumed by the employee, and by the so-called departmental rule, whereunder the fellow servant's responsibility only extends to the same grade of employment, and by the further rule that the employer is responsible for his own negligence in not providing the necessary machinery and appliances of the employment.

These qualifications, however, have been found exceedingly difficult of application under the complicated conditions of modern enterprise. A large field is, therefore, left for the display of sympathy by juries, and subtleties by lawyers and courts, as to whether on the theory of negligence of the employer, the employee can recover for injuries suffered in his employment. The results of this system are necessarily uncertain and expensive, and hence unsatisfactory both to the employer and employee. The fellow servant rule was all but abolished by the Act of Parliament in England in 1880, and it has been abolished or materially modified in several of the States of this country. The Employer's Liability Act enacted by Congress, both that of 1906, which was held to exceed the power of Congress, and that of 1908, in effect abolished the fellow servant rule and introduced the doctrine of contributory negligence, whereunder it is left to the jury to determine how far the negligence of the employee

contributes to the injury. The liability of the employer however, in these acts is based distinctly on the principle of negligence.

Compensation in England and Germany.

England and Germany, and we can say the Continental countries in general, have gone far beyond the United States in substituting the principle of compensation for that of negligence, in this matter of injuries to the employees in the course of their employments. Thus, in England, under a conservative government in 1897, the Workmen's Compensation Act was enacted by the British Parliament. This act provided for compensation to workmen killed or injured in the course of employment according to a fixed schedule, applicable in every case where the death or injury was not due to his own fault. The effect was to substitute for the liability in tort the principle of insurance by the employer of the safety of his employee, as one of the hazards of his business, on the same principle that the buildings and machinery of the business are insured by him against loss by fire or the elements. The old doctrine of contributory negligence is done away with, except in the case of serious or willful misconduct of the employee. Contracting out of the act is not permitted unless with reference to some scheme of insurance, approved by public authority. Later, by the Act of 1900, the provisions of this act were extended to agricultural and cognate employments.

On the Continent of Europe the same result has been effected under a somewhat different system, that is, in the compulsory insurance of working men by the employer. Mr. Holland in his *Principles of Jurisprudence*, summarizes the legislation on this subject by saying that the tendency on the Continent of Europe is to substitute a

system of State insurance for any direct liability of the master either for negligence or under the implied contract of indemnity, and that the burden imposed on the employer by the assumption of this liability is met by insurance, that is, by insurance companies assuming the employer's liability.

The subject of compensation to employees for injuries is now being extensively investigated in this country, both by legislative commissions in certain states and by employers and employees. Though in effect adopted by some organizations, through private contract, it has not yet been adopted by Statute in any state, though the principle as will be shown later, has been adopted by Congress in relation to employees of the Federal government.

Social Betterment Legislation.

The term "labor legislation", however, has a broader application in the purpose of this Association for Labor Legislation than immediate relation of employer and employee. In this broader sense the term includes all so-called social betterment legislation, which finds its inspiring impulse in the humanitarian sympathies of our time and aims to use the powers of government to elevate, as far as may be, the poor and unfortunate, *i.e.*, the submerged classes of industrial civilization. Legislation of this class is illustrated in several states of this country by the extension of our public school system to include industrial education, at public expense, in primary and secondary schools, as also compulsory attendance in schools. In England it has taken a much wider field and has included the purchase of lands for laborers, the housing of the working classes, the compulsory closing of shops at specified hours, the furnishing of meals to school children, and an elaborate system of old age pensions.

Labor Legislation in United States.

We have, under our Federal Constitution, a sovereign national government with (as Mr. Bryce classifies it) a rigid constitution reaching directly the individual citizen as to subjects of national concern, and forty-six sovereign states, each with its own rigid constitution. In the words of Chief Justice Marshall, each (the Federal and State government) is sovereign with respect to the rights committed to it, and neither is sovereign in respect to the rights committed to the other. Since Marshall's time the complexity of our political system has been increased under the Fourteenth Amendment through the extension of the Federal power to the protection of the rights of the citizen against impairment by State authority.

It needs only a statement of the labor problems which have been detailed, to show that the solution in the main must depend upon the legislation of the several states. The only direct legislative power of the Federal government in dealing with the relation of employer and employee, apart from its control of the District of Columbia, the Territories and dependencies, is in its right to regulate commerce among the states and with foreign nations. The difficulty growing out of this complexity of our Federal system in the enactment of wide extended and far reaching social legislation, is inherent in the very nature of our government. It is in signal contrast with the facility with which such legislation can be enacted by the Parliament of Great Britain, where there are no constitutional restraints upon legislation imposed by rigid fundamental law. The contrast is far greater now than it was at the time of the adoption of the Federal Constitution, as the authority of the House of Commons, as the controlling power of English legislation, subject to

an appeal to the people, is far more distinctly established now in what we may term the constitutional law of England than it was in 1787.

This difficulty is still more complicated by the tendency in our recent constitution-making to expand our rigid state constitutions far beyond the range of fundamental laws, limiting the scope of legislative power. They have become, in fact in some cases, veritable codes of laws, dealing in many cases with the detailed subjects of legislation. These constitutional restraints by the shortening of the legislative session and otherwise, have had the effect of making any kind of progressive legislation, particularly where public opinion is not effectively educated, very difficult of enactment.

Our rigid State Constitutions with these detailed provisions, designed to impede the enactment of laws, have made the problem of effective labor legislation difficult in another point of view, in that they develop in some cases what may be termed an over-subtlety in lawyers and courts in the construction of these constitutional provisions. This is illustrated by the frequency with which labor and other reformatory legislation has been held violative of State Constitutions, while under the broader provisions of Federal Constitution such judicial annulment of Congressional legislation has been far less frequent. In this connection, however, it should be observed that the legislative measures which are thus annulled in the courts, are sometimes carelessly prepared, without observance of constitutional limitations, and, therefore, are peculiarly vulnerable to judicial criticism. In this country personal property rights and liberty of private contract and protection against class legislation are secured both by the Federal and State Constitutions, so that a two-fold constitutional question under our dual

form of government is presented in testing the validity of this class of legislation.

Commerce and business are not limited by, and do not recognize state lines, and this fact must be recognized in the enactment of legislation of this character, as a manufacturer is confronted with competitors from other states who may be subjected to very different legislation. Where the legislation looks only to the elevation of the plane of competition by controlling the employment of children and women, such objections may be met, as like objections to the Factory Acts of Lord Shaftsbury were met in England, by the suggestion that the increased burden to industry would be more than compensated by the increased effectiveness of labor. In a broader point of view, however, irrespective of any economic or even humanitarian considerations, the enlightened public opinion of the present day would not tolerate such conditions in our industries as would menace the future citizenship of a self-governing country. In its constitutional aspects, there is an obvious difference between legislation which seeks only to remedy abuses in industrial conditions which directly affect the public welfare, as in the labor of children and women, and the imposition upon the employer, as in the recent legislation in England, of distinct burdens which add to his cost of production, with the expectation of his shifting the burden upon the consumer.

These considerations are so far reaching that their proper discussion would require much more time than the present occasions permits. It is sufficient to say, however, that they illustrate the care and wise discrimination with which such legislation must be prepared, not only that it may not violate the constitutional guaranties against class legislation and may conform with other consti-

tutional requirements, but also that it may not disturb the delicate balancing of the factors of our business life, and thus embarrass the prosperity of our industries, whereon the employment of labor depends.

Under these complex conditions, in our community of federated sovereign states, it is, of course, very desirable that we should have uniformity of legislation by the states on matters relating to the conditions of labor. This, however, is very difficult of realization for the obvious reason that there is a vast difference in local conditions which must be studied and to which such legislation must be adapted; and, therefore, there is a difference in the local public opinion which is necessary to secure such legislation and make it effective. The extension of manufacturing industries throughout the country, has developed the fact that public opinion in the states which are newer in industrial growth is not yet prepared to enact and enforce the legislation which has been enacted and is being enforced in the older states, even in the correction of the recognized abuses.

These difficulties and complexities have led many earnest reformers, who are impressed with the facility with which such progressive legislation is enacted by a sovereign parliament of a single government under the flexible constitution of Great Britain, to deplore the restraints growing out of our complex form of government, and we have a demand not only for legislation from the Federal Government which would involve a strained construction of the Federal power to regulate interstate commerce, but some go further and ask for an amendment of the Constitution of the United States so as to give the Federal Government control over all conditions of labor.

It should be observed that this disposition of reformers

to look to the Federal Government as the most convenient agency in securing desired reforms, illustrates how little the old time jealousy of the invasion of state rights by the enlargement of the Federal power avails against the current trend, demanding Federal action, wherever it is deemed that a desired end can be more effectively secured thereby. This impulse also affects capitalists who control great corporate interests, who are beginning to prefer one regulating master to forty-six; and also the great labor organizations, who are struggling for the betterment of their own conditions, regardless of old-time constitutional theories of the limitations of Federal power. The traditional dread of its extension carries little weight in this practical age, when the ends, commercial or philanthropic, can be best secured by the exercise of such power.

Public Opinion in Solution of Labor Problems.

The contrast, however, between the facility of legislation in the way of social reform under the flexible constitution of Great Britain and the delay and difficulty encountered under our Federal system of rigid constitutions, is less important, when the underlying power of public opinion essential for the enforcement of any social reform is considered. It has been wisely said that legislation is the final agency by which the law is brought into harmony with social needs. Those needs must, however, exist and be recognized by prevailing public opinion before legislation, particularly in regard to such relations as employer and employee, master and servant, can become effective. More than a generation passed away before the labors of Lord Shaftsbury in the English Parliament developed a public opinion which demanded his reforms, and the so-called factory

legislation was accomplished. Nearly a century passed since Bentham first advocated his reforms in law procedure, and though recently enacted in England public and professional opinion in this country is only recently beginning to realize the necessity for their adoption. The anti-saloon or prohibition agitation in this country is an effective illustration of the dependence of social legislation upon local public opinion. Such legislation is easily enforced in rural communities where the local opinion is favorable; but in cities, where such supporting opinion is lacking, it is necessarily a failure. In view of the continental extent of our country with its varied climatic and geographic conditions from the lakes to the gulf, and from ocean to ocean, it is obvious that no form of free government other than a federated government of independent states, with the widest extension of local control of local needs, could be successfully administered.

As I read the "Review of Labor Legislation of 1900", published by this Association, I am impressed not only with the wide scope of subjects included, but also with the indications of widespread interest and substantial progress in the different states in all parts of the Union. It may be true that states, where manufacturing interests are comparatively new and few in number, should be backward in developing a public opinion which demands an effective regulation of the conditions of employment. While information and discussion will in time develop the public opinion which will remedy existing abuses by appropriate local legislation, this gradual progress will be a sure one.

Influence of Federal Government.

On the other hand, the influence of the Federal Government is being effectively, if not so directly, exercised.

Thus, the opinions of the Supreme Court in sustaining the Utah eight-hour law in mining, and later the upholding of the Oregon regulation of the hours of woman employment, carry a weighty influence in developing a public and judicial opinion in all parts of the country. Also in legislation as in the employers' liability acts of 1906 and 1908, irrespective of any constitutional questions involved, the abolition of fellow servant rule and the introduction of the comparative negligence rules have doubtless, a wide extended influence in directing state legislation.

A still more effective illustration of the indirect influence of our Federal power, is found in the Act of May 30th, 1908, wherein the United States Government, as one of the greatest, if not the greatest, employer of labor in the country, adopts the principle of compensation to its own employees, killed or injured in the course of their employment. As the government was not subject to an enforceable employers' liability, this act was a declaration of the essential justice of the principle of compensation. No official report is yet obtainable as to the operation of the Act, but I am informed that the law covers some 75,000 in the government service, and that for the eleven months, ending June 30, 1909, there had been paid as compensation some \$33,000.00, and \$115,000.00 for other injuries.

The enactment and enforcement of this Statute has promoted among employers the agitation of this subject of compensation. In a broader point of view the Department of Commerce and Labor, not only in its regulation and control of immigration, but even in its statistical investigating powers of a non-compulsory nature, influences the trend of State legislation on these subjects. The collection by the Federal Government of accurate official reports of the conditions of labor and industries of the different states, is of itself a powerful factor in the education of public opinion on labor conditions.

The Necessity of Restraint on Legislative Power.

Our Federal Government was organized upon the distinct theory that the permanent well being of the people was secured by restraining the influence of temporary impulses and interests, and by this temporary restraint allowing the sober matured judgment of the people, through their representatives, to control. This is the political philosophy underlying our complex organization of sovereign representative republics under rigid written constitutions limiting the legislative power. Burke, in speaking of the necessity of this restraint upon the people, says: "This can only be secured by a power out of themselves, and not in the exercise of its functions, subject to the will and to those passions which it is its office to bridle and subdue. In this sense the restraints on men, as well as their liberties, are to be reckoned among their rights."

It has been wisely said that our system of constitutional restraints upon legislation obstruct the whim but not the will of the people. The facility with which legislation, recommended by the ministry in power, can be enacted in England, is not without its dangers, which have been freely admitted by the wisest of English statesmen. The danger, it is true, is in a great measure controlled by the tremendous power of custom and precedent on the English people, far greater than in this country on our people. Thus, President Lowell, in his luminous treatise on the Government of England, says there is great danger under the system of party government "to bid for the support of classes of voters by legislation for their benefit"; and he adds: "With the prevailing tone of thought and rapid changes in popular government such a tendency to deal with symptoms rather than causes is a characteristic of modern democracy, but owing to the concentration of

power in the hands of the ministry it is especially pronounced in the case of England."

In this country custom and precedent have far less influence in controlling the political action of our people, and therefore there is a greater necessity for the restraint upon legislation afforded by our written constitutions limiting and controlling the legislative power, whether Federal or State.

The difficulty of securing uniform state legislation in the regulation of conditions of employment, particularly where such legislation imposes substantial burdens upon the employer which would handicap him in competition with his competitors in other states, though serious, is not a hopelessly discouraging condition. As already pointed out public opinion will sooner or later discover in all the states that the prohibition of child labor and regulation of the hours of women's labor, is not only demanded by considerations of humanity and public safety, but as long recognized in England really in time increases the productive efficiency of labor.

Apart from such legislation necessitated by these considerations, the changes in the relation of employers and employees, as in the matter of compensation, will be gradually secured through voluntary co-operation of employers and employees. This trend is illustrated by those of our great employing industries who are adopting, through this voluntary co-operation, schemes of profit sharing, pensioning and of mutual insurance against the hazards of employment. We are prone in this age to rely too much on the efficacy of legislation in effecting reforms in human society. We have signs on all sides of an awakening interest in this subject.

The great usefulness of this Association is in gathering and disseminating the information as to actual condi-

tions, which will educate the public opinion, and thus prepare the way for the co-operation of employers and employees. Public opinion in this age and country, when informed, moves rapidly. Amid so many encouraging signs we cannot but be hopeful that these problems, however difficult they may appear, will find their solution, whether by legislation or by voluntary individual action, through the working of the mightiest of political forces, the enlightened public opinion of free men in a free state.

PRECEDENT VERSUS CONDITIONS IN COURT INTERPRETATION OF LABOR LEGISLATION.

GEORGE G. GROAT.

Were more time at our disposal it would be profitable to include in the introduction to this paper a fuller statement of the importance of American courts in our system of government. Before this audience it will doubtless be as safe as on this occasion it is necessary to pass it over with this declaration: the courts should allow the maximum of change with the minimum of departure from former interpretation of principles. It at once becomes apparent that any statement however carefully phrased still leaves a wide margin within which will be found room for difference of opinion. Much will depend upon the relative emphasis given to the terms maximum and minimum. Such a question affords ground for legitimate discussion without exposing one to the charge of disrespect for the courts.

It will be a mere truism to state that competition lies at the base of our industrial structure and that upon the preservation of competition depends our industrial stability. Trite as the saying is, we wish to turn to it as a starting point. So far as employer and employee are concerned, competition lives in approximate equality of bargaining power. It follows, necessarily, that any effort to destroy equality of bargaining power is harmful, and any effort to maintain it is helpful.

A consequence of enormous importance growing out

of the industrial changes of the century that has just closed is the readjustment of the relation between employer and employee. No longer does individual deal with individual. The group relation now predominates. One other change must be mentioned. The employer has monopoly control over the opportunity for work. The shop, the material, the tools are his. The employee has none of these, only his strength and skill. There is no need of extending the description further in order to emphasize the point. There can be no equality of bargaining where the single employee faces unaided the single employer.¹

But competition is a fact of still greater importance if we look at it from a different point of view. Competition is not struggle for existence. However nearly competition and struggle for existence may coincide in the animal world, society forbids the coincidence within its own sphere. When the successful competitor has gained the advantage over his rival, society turns its thumb up. The victor is not permitted to dispatch his opponent. Rivalry between workmen and their employers is subject to these rules. The rules, however, have been rather loosely drawn in the past, leaving much to the generosity of the victor and relying much on the ability of the defeated still to be able to look after himself. Experiences with *laissez faire* reveal only too clearly the outcome. The rules of the game must be drawn more rigidly. This may be done in one of two ways. (1) Society may allow the contest to go on under the old rules until the weaker side is so nearly exhausted as to make it necessary for the state to come to its relief. This relief must then be in the form of old

¹ This suggests the choice between labor organization and regulative legislation as a means of equalizing conditions. We are concerned here only with the latter.

age pensions, accident insurance, sanatoria for the restoration of health. (2) The alternative is so to draw up the rules of the game as to handicap the stronger, giving to the weaker an advantage, an arbitrary or artificial advantage if necessary, and then let the game go on under the new rules, at the same time observing carefully the effect of the modifications made. This can be done by legislation sufficiently "radical", if you please, to change the conditions.² In this way equality of bargaining power may be maintained, as being the point of greatest importance. If the courts refuse to see that this latter plan is within the boundary of constitutional rights, that there is distinct need for this "radicalism", they defeat the entire plan and either leave the former choice to be adopted, or open the way for an uninterrupted struggle for survival.

The choice, so far as indications may be read from the attitude of society, seems to lie with the latter of the alternatives. Efforts are being made to readjust the relations on a basis of equality of bargaining power, and to accomplish it through legislation.

A century ago the problems of today could not have arisen. Industry was based upon the personal relation. During that early period the courts were developing their lines of constitutional interpretation, summing them up in generalized principles and rules of law. These were woven into and became part of the constitutional interpretation of the period. So it developed that the conditions of an earlier period were of importance in shaping the principles which are now used as precedents. Because of this, the legislatures and the courts in the work-

² Probably it should be stated in passing that much of this should be left to the organization of labor and that legislation should be resorted to only in cases where organization fails to accomplish the purpose.

ing out this problem have come into most serious conflict.

We think that a careful study of the decisions dealing with labor cases covering the period of our national existence reveals three facts of large importance:

(1) The judges on our benches have been too greatly influenced by precedents set in decisions applicable to former conditions;

(2) There is clearly discernable a tendency on the part of many influential judges distributed rather widely among state courts of final appeal and the federal courts to give more attention to conditions;

(3) The changes desired are being brought about by reading new meaning into the present existing phrases of the constitution, thus making the formal amendment of the constitution unnecessary.

For the second and third findings we may rejoice, at the same time entertaining the hope that the tendency may become more pronounced, stopping only just short of the danger line imperilling the fundamental principles of American constitutionalism.

For the first fact in evidence we may note the cases generally known as the Tenement House case³ and the Bakers' case.⁴ The decisions in these cases are too widely known to call for extended comment here. Mrs. Kelley has summed up all that need be said, perhaps, in order to emphasize the far-reaching importance of the former of the two decisions, as obstructive to the solution of the tenement house problem. A few sentences from her comment will indicate the thought. "Had that earliest statute (the tenement house law) been sustained by the Court of Appeals of New York it is safe to assert that

³ *In re Jacobs*, New York Court of Appeals, 1885, 98 N. Y., 98.

⁴ *People v. Lochner*, New York Court of Appeals, 1904, 69 N. E., 373; *Lochner v. People of the State of New York*, U. S. Supreme Court, 1905, 198 U. S., 45.

the odious system of tenement manufacture would long ago have perished in every trade in every city of the Republic." "Because the personal liberty of a working-man would be interfered with, if his employer were prohibited from requiring him to work at home, the unhappy dwellers in the tenements have seen their homes invaded by all manner of materials, from tobacco leaves and stems, to the bales of paper and tubs of paste required in making paper bags, and by three sets of inspectors." "For the convenience of the powerful, the weakest industrial factors in the community . . . have been invaded by industry and inspectors."⁵ In the face of such conditions the court, it will be remembered, insisted that the law intruded upon the right of the tenement house owner to have his property used in this manner if he wished, and also intruded upon the sacred right of the cigar maker not to be forced by an act of the legislature "from his home and its hallowed associations and beneficent influences to ply his trade elsewhere."

Many of the facts brought out by the investigation of conditions in bake shops are still fresh in mind. Yet following that investigation came the final decision of the Supreme Court of the United States reversing the decision of the New York court of appeals and declaring the provisions of the law to be unenforceable so far as the hours of labor are concerned. It is encouraging to note that in the latter case far greater attention was given to conditions than in the former. Yet in that case one may read such expressions as the following, in addition to the declaration that personal liberty had been invaded by the statute. "Statutes of the nature of that under review, limiting the hours in which grown and intelli-

⁵ Some Ethical Gains Through Legislation, pp. 231, 239, 245-246.

gent men may labor to earn their living, are mere meddlesome interferences with the rights of the individual." "It may be true that the trade of a baker does not appear to be as healthy as some other trades, and is also vastly more healthy than still others. To the common understanding the trade of the baker has never been regarded as an unhealthy one. Very likely physicians would not recommend the exercise of that or of any other trade as a remedy for ill health." "The bakers' vocation is one that has existed practically in all ages and in all countries. . . . It has never been supposed that it was a trade or vocation that was or might be dangerous to health." "The claim that the compounding of these constituents, so prepared, in the business of a baker, is an unhealthy occupation, will surprise the bakers and good housewives of this state," closing with the touching allusion to the "avocation of the family baker, engaged in the necessary and highly appreciated labor of producing bread, pies, cakes, and other commodities more calculated to cause dyspepsia in the consumer than consumption in the manufacturer."

The growing importance of conditions may be shown by reference to the form of statement that experience has demonstrated to be necessary in order that a statute might be effective. Take, for example, the legislation in New York state for the regulation of the hours of labor. In 1867 the law read, "Eight hours of labor, between the rising and setting of the sun, shall be deemed and held to be a legal day's work, in all cases of labor and service by the day, where there is no contract or agreement to the contrary." In 1870, with the extension of the measure so as to include laborers for the state, it read, "eight hours shall constitute a legal day's work for all classes of mechanics, working men and laborers,

excepting those engaged in farm and domestic labor; but overwork for an extra compensation by agreement between employer and employee is hereby permitted." The outcome of such legislation was inevitable. So long as the way was open for an agreement to work for longer time, the law was virtually a dead letter. Realizing that to be the case, labor organizations began to appeal to the legislature for assistance in making agreements. They wished to contract for a shorter day than the employer was willing to accept. Having the advantage that will normally fall to the employer, he was able to dictate a longer day than was acceptable to his workmen. In order that this result might be prevented, the legislature was induced to enact in certain instances where conditions seemed to require it laws into which were inserted the words "require or permit". These words have been in many cases a stumbling block to the courts. The employer, it seemed to them, might in certain cases be prohibited from requiring his employees to work long hours, but certainly any one who wished to work should not be prohibited. In fact, such a privilege has been all that employers have needed in order that they might accomplish all that they desire. With the unequal bargaining power that characterizes the situation it has been but a slight matter for the employer to induce the worker to wish to work for any length day that satisfied the employer. The mere matter of posting a notice to the effect that no one was required to work longer than the required number of hours, thus throwing the responsibility on the workmen, and then letting it be generally known that the employer could not use any one who did not wish to be permitted to work for longer hours:—that was all that was necessary. The courts came to the assistance of the employers with the doctrine of personal

liberty and the employer's work was done. The entire force of the statute was in the word "permit". Without it the law was of no consequence whatever. With it the law was of importance in actually tending to equalize the conditions of bargaining.

Overlooking the importance of such a development, the Supreme Court of the United States held⁶ "The mandate of the statute, that 'no employee shall be required or permitted to work' is the substantial equivalent of an enactment that 'no employee shall contract or agree to work', more than ten hours per day; and, as there is no provision for special emergencies, the statute is mandatory in all cases. It is not an act merely fixing the number of hours which shall constitute a legal day's work, but an absolute prohibition upon the employer permitting, under any circumstances, more than ten hours' work to be done in his establishment. The employee may desire to earn the extra money which would arise from this working more than the prescribed time, but this statute forbids the employer from permitting the employee to earn it." "The general right to make a contract in relation to his business is part of the liberty of the individual protected by the 14th Amendment of the Federal Constitution."

The efforts of organized labor to discourage overtime work has much behind it that is in no way connected with what is often called the greed of the worker. The importance in which this matter is held is seen in a resolution adopted by the American Federation of Labor, recorded in the *American Federationist*.⁷ "We advise strongly against the practice which now exists in some industries of working overtime, beyond the establish-

⁶ *Lochner v. People*, 198 U. S., 45.

⁷ Vol. 4, p. 187.

ed hours of labor. . . . It is an instigator of the basest selfishness, a radical violation of union principles, and . . . it tends to set back the general movement for an eight hour day." From the report of the Committee of One Hundred,⁸ writing under the general heading, "Things which need to be done" we may read the statement: "In industrial and commercial establishments employers may greatly aid the health movement . . . by providing. . . physiological (generally shorter) hours of work."

Another instance of this tendency is brought to light in the Report of the Anthracite Coal Strike Commission.⁹ The law of 1875, requiring payment by weight for coal mined, added the following: "Provided, That the provisions of this act shall not apply to or embrace any persons, partnerships, associations or corporations, that may or shall by any contract, agree with his or their miners in any of said mines or collieries, otherwise than as is provided in this act, for the compensation of mining the same, and no penalty provided therein shall apply to such persons, partnerships, associations or corporations so contracting or agreeing." The Report added,—“It may seem strange, but from all the evidence before the Commission the undoubted fact appears to be, that the requirements of this law have never been complied with. It is alleged by the counsel for the operators, that they have never been applicable, for the reason that the situation came within the purview of the last proviso of the section quoted, which exempts from its provisions all cases where the employer shall, by contract, agree with his miners, otherwise than is provided in the said statute, for their compensation.”

⁸ Bulletin 30, Being a Report of National Vitality, p. 128.

⁹ Bulletin of the Department of Labor, No. 46, pp. 483-484.

What shall be done, it may be asked, when such movements, kept within reasonable limits, and undertaken for the benefit of those classes who know their own interests but are unable to protect them in the field of freedom of contract, are annulled by the courts?

In yet another particular do many of the decisions show a marked indifference towards the conditions that gave rise to the legislation that they condemn. The situation resolves itself in fact into this. Conditions develop that make any exercise of choice in agreement to work quite out of the question. The inequality of bargaining power has become so marked that the employer is virtually dictator of terms and the withdrawal of the workmen to seek other work is virtually impossible. As a result efforts are made by the men themselves or by public spirited persons who know the situation at first hand to modify the inequality through legislation. This usually means legislation regulating either the length of the working day, the intervals to lapse between wage payments, or the kind of payment. The legislation may not bear directly upon public health conditions, as that term is generally understood. It deals only with the more personal question, if you please, how long may an employer insist that his workmen shall work each day, how often shall wages be paid, and what may be used in payment. Such matters touch at their very core the agreements that must be made between every employer and employee before work can begin. At an earlier time the most equitable bargain could be made by insisting that each party to the agreement should be left to follow his own interest as he saw it. That early condition has passed away and we find many of our courts blind to the conditions that prevail today clinging loyally to the ideas of a former day, and applying them to the positive injury

of those very ones whom they are seeking to protect. To protect every man in the exercise of his own liberty of choice of conditions in which he shall work results, today, in permitting to one party, the employer, the arbitrary dictation of conditions in which the other, the employee, must work or starve.

That such a situation is frequently recognized is among the hopeful signs. That it has been so often overlooked gives cause not only for regret, but also for much of the growing dissatisfaction with our courts on the part of large numbers of our population.

There are several cases to which one may turn if he wishes to look at the hopeful side.¹⁰

In this field one may read such extracts as the following: "The desire for place, and in many instances the necessity of obtaining employment, would subject them (women) to hardships and exactions which they would not otherwise endure. The employer who seeks to obtain the most hours of labor for the least wages has such an advantage over them (the women) that the wisdom of the law, for their protection, cannot well be questioned. No doubt, these considerations were the moving cause for the passage of the law in question." (Wenham v. State.) In *State v. Brown and Sharpe Manufacturing Company*, the justice goes at length into the question of the greater power that lies in the corporation and the advantage consequent upon it. "It is a matter of common knowledge that while corporations . . . are the

¹⁰ *Muller v. Oregon*, U. S. Sup. Court, 1908, 208 U. S., 412; *Wenham v. State*, Sup. Court of Nebraska, 1902, 91 N. W., 421; *State v. Brown and Sharpe Mfg. Co.*, Sup. Court of Rhode Island, 1892, 25 Atl., 246; *International Text-Book Co. v. Weissinger*, Sup. Court of Indiana, 1902, 65 N. E., 521; *Peel Splint Coal Co. v. State*, Sup. Court of Appeals of West Virginia, 1892, 15 S. E., 1000; *Holden v. Hardy*, U. S. Sup. Court., 1898, 169 U. S., 366; *Johnson v. Good-year Mining Co.*, Sup. Court of California, 1899, 59 Pac., 304.

richest and strongest bodies, as a rule, in the state, their employees are often the weakest, and least able to protect themselves, frequently being dependent upon their current wages for their daily bread." Replying to the contention that if the workingmen wish the conditions of pay provided for in the law, they may secure it by agreement with the employers, the court replies "that poverty and weakness can wage but an unequal contest with corporate wealth and power, and that the legislature in granting valuable corporate powers and privileges might be willing to do it . . . only on condition of minimizing corporate power to drive hard bargains with their employees, who, too often in the sharp and bitter competition for work, have to submit to such terms and conditions as their employers see fit to prescribe." The law "was clearly passed in the interest of the employee, and it is not easy to see how it would operate to his disadvantage."

"The legislature, as it thought, found the employee at a disadvantage in this respect (payment of wages in money), and by this enactment undertook to place him and the employer more nearly upon an equality. This alone commends the act, and entitles it to a place on the statute books as a valid police regulation." (*Knoxville Iron Co. v. Harbison*, U. S. Sup. Ct., 1901, 183 U. S. 13.)

On the other hand the following may be taken as a sample. "The act (limiting hours of labor in mines and smelters) is equally obnoxious to the provisions of our bill of rights, set out in the statement, which guarantee to all persons their natural and inalienable right to personal liberty and the right of acquiring, possessing and protecting property." (*In re Morgan*, Sup. Ct., of Colorado, 1899, 58 Pac., 1071.)

But one step further and we have the climax in a condition bordering upon absurdity. Here we may make the point in language taken from decisions and here again the exceptions afford the basis of hope as well as of despair. In *Holden v. Hardy*,¹¹ we read: "It may not be improper to suggest in this connection that although the prosecution in this case was against the employer of labor, who apparently under the statute is the only one liable, his defense is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employees, whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class. But the fact that both parties are of full age and competent to contract does not necessarily deprive the state of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself. 'The state still retains an interest in his welfare, however reckless he may be'." Again, in *Re Broad*,¹² "It is a notable fact in this connection that the alleged constitutional right of the laborer to contract his labor at any price which seems to him undesirable is not in this or any other reported case a claim urged by the laborer, but the earnest contention in his behalf is made by the contractors who are reaping the benefits of the violation of that contract in paying the laborer a less remuneration than he is entitled to under the statute."

Although in no reported case is the claim urged by the laborer, and although in fact the laws are not only wholly acceptable to him and even urged by him upon

¹¹ 169 U. S., 366.

¹² Sup. Court of Washington, 1904, 78 Pac., 1004.

the legislature, yet the courts continue to find in such legislation that the rights of the workman are being trampled upon. The employer is thus able to turn the very constitution itself into an instrument of inequality.

Opposition to the factory acts in England was based upon class interest joined with the accepted principle of *laissez faire*. Opposition to similar legislation in this country is based upon class interest joined with the accepted principle of individualism embodied in our constitution.

Finally, may we come to some conclusions that will be of value.

1. The more one reads the decisions the more he must necessarily be impressed with the fact that a number of the decisions all too large are given over to the repetition of those time honored phrases of an extreme individualism. Discussions, often unnecessarily elaborate, are to be found ringing the changes on "life, liberty and property," the "trinity of rights," the sacred right of "freedom of contract". It may be interposed that these are all obiter, their injection into the opinion reveals the point of view of the judge, and further shows to what extent these obstructions loom up to obscure the real conditions out of which the case grows. Read any of such general statements in the abstract and they have a ring of true Americanism that appeals to us. But read them in the light of present conditions with which they undertake to deal and take into consideration the conclusion to which they lead and one must confess that after all the ring that before seemed true comes to have a hollow sound.¹⁸ It comes to assume the appearance of an effort more or less blind to compel conformity of present conditions to past ideals through the persistent

¹⁸ See e. g., *State v. Goodwill*, 10 S. E., 285.

use of expressions brought forward from a former age. Liberty does not mean the same today that it did a century ago. The idea that the term carries with it is, if possible, of greater import than ever before.

2. If such use of these phrases were merely to no purpose at all, the situation would not be so serious. In fact the courts are so using them as to defeat the very purposes for which the courts exist. Liberty is so interpreted as to deprive of liberty those who stand in greatest need of real liberty. In *Republic Iron and Steel Company v. State*,¹⁴ it was urged by the Attorney General that "wage earners are not upon an equal footing with employers, and opportunities for oppression and consequent public suffering ensue." (A law providing for weekly payment of wages.) To this the court replied, "Assuming all these things to be true, they do not of themselves justify the arbitrary invasion of the personal rights and liberty of the citizen." In *State v. Loomis*¹⁵ we find that in prohibiting the use of store orders in payment of wages the legislature takes away the liberty to contract as others may, which is "simply depriving such persons of a time-honored right which the constitution undertakes to secure to every citizen." In fact, and as is, indeed, suggested in the dissenting opinion in this case, the law secures a liberty rather than takes one away, and the courts in annulling the law reduce to a shadow again the liberty which the legislature undertook to actualize. What the workmen most want is thus taken away from them in order that they may have their constitutional rights.

3. There is evidence that the courts themselves are inclined more and more to interpret constitutionality in

¹⁴ Sup. Court of Indiana, 1903, 66 N. E., 1005.

¹⁵ Sup. Court of Missouri, 1893, 22 S. W., 350.

terms of necessity as they come to see the necessity. This conclusion was reached by Professor Seager in an article written in 1904.¹⁶ It may be summed up in the following sentences. "Under the flexible provisions of our constitutions the question of the constitutionality of a restrictive labor law is inseparably connected with the question of the wisdom of such a law." "Confused and conflicting as are these decisions, it is believed that a study of them justifies the contention that in the field of labor restrictions the courts will sustain any measure which they think really calculated to promote the public welfare." "The constitutionality and the economic aspects of the question are so intimately related that we may be certain that a court which believes a protective law economically desirable will find it legally admissible." While no one will deny the advantage of this tendency it must be admitted that such a tendency is not sufficient. Too much depends upon the method of presentation of the cases to the court, and altogether too much upon the point of view of the judges. It must not be overlooked that the degree of necessity in a given case will not appear to be the same to all who sit on the case.

4. The foundation may be laid more securely by a telic effort. Here may be indicated three possible lines of progress:

(a) The call is already being heard for a change in the curriculum of the law school. Articles in the law periodicals within the past two years have given expression to the need.¹⁷ A closer union between the principles

¹⁶ "The Attitude of American Courts Towards Restrictive Labor Laws", *Pol. Sci. Qu.* Vol. 19, pp. 589, 393, 601.

¹⁷ See e. g., Bruce, *The Judge as a Political Factor*, *Green Bag*, 19:663; Humble, *Economics from a Legal Standpoint*, *Am. Law Rev.*, 42:379; Tibbetts, *Conformity of Legal Decisions to Ethical*

of law on the one hand and the principles of economics and sociology on the other would the better equip those to whom falls the responsibility of settling so many of our industrial problems. Being newer sciences, their principles do not gain ready recognition at the hands of the law, while at the same time the loosest and most unsatisfactory uses are made of many so-called economic expressions.

(b) There is coming more clearly into view the need for the economist as a consulting expert. The appearance of careful inductive studies of conditions based upon the scientific methods of investigation bears evidence that is promising for the future. With increasing frequency the economic expert must be called in to assist the lawyer in bringing before the court the true significance of conditions. From these two lines of development one sees new possibilities opening. The accumulation of material, reliable and useful, in the hands of lawyers who know the value of economics and sociology and who will call to their aid experts in these lines must certainly make an impression on the courts that will tell in the right direction.

(c) Of more fundamental importance than the above is the necessity that those upon whom is to fall the duty of interpreting our constitution in terms of the present shall have the new understanding of society. The importance of the word "social" as a qualifying adjective is constantly increasing. Social legislation is

Standards of Right, *Am. Law Rev.*, 40:391; also, Conformity of Legal Discourses to Ethical Standards of Right, *Can. Law Rev.*, March, 1907; Tupper, *Sociology and Comparative Politics*, *Jr. of Comp. Leg.*, August, 1908; Pound, Do We Need a Philosophy of Law? *Col. Law Rev.*, 5:339; also, The Need of a Sociological Jurisprudence, *Green Bag*, 19:607; also, The Causes of Popular Dissatisfaction with the Administration of Justice, *Am. Law Rev.*, 40:729.

clearly the order of the day, because the problems to be dealt with by legislation are social problems. Justice is ever the thing sought, and social justice is the thing now sought. But social justice is being defined more clearly. Modern students of society have done much to modify our practical conception of justice, and to give expression to the new. Social justice lays down for us a new rule. That new rule must become a part of our constitution. No amendment is necessary; all that is needed is to have the new meaning read into the present phrases. A brief extract from three authorities will suffice to set forth the conception of social justice. "Justice consists in granting, so far as possible, to each individual the opportunity for a realization of his highest ethical self, . . . this involves, or rather is founded upon, the general duty of all, in the pursuit of their ends, to recognize others as individuals who are striving for, and have a right to strive for, the realization of their own ends. In other words, there is a general ethical mandate to be a person, and to respect others as persons; to treat others as ends, never as mere means to one's end."¹⁸

"The true definition of justice is that it is the enforcement by society of an artificial equality in social conditions which are naturally unequal. By it the strong are forcibly shorn of their power to exploit the weak." "The civil and political inequalities of men have been fairly well removed by it (civil justice). Person and property are tolerably safe under its rule. It was a great step in social achievement. But society must take another step in the same direction. It must establish social justice."¹⁹

"Justice may, then, be described as the effort to

¹⁸ Willoughby, *Social Justice*, p. 24.

¹⁹ Ward, *Applied Sociology*, pp. 23, 24.

eliminate from our social conditions the effects of the inequalities of Nature upon the happiness and advancement of man, and particularly to create an artificial environment which shall serve the individual as well as the race, and tend to perpetuate noble types rather than those which are base."²⁰

This new principle must be a guide for our courts as well as for our legislatures and administrative departments. We are fast approaching the time when our progress must cease until this idea is embodied in our constitutional law.

5. It is doubtless true that many judges, as well as others, look upon the courts as the bulwark against an extreme radicalism, or paternalism, or even socialism. Insofar as through such judges the courts serve this purpose they are of inestimable value. If they allow this feeling to pass over into one which emphasizes the necessity of a literal preservation of the ideas of the past unchanged, there immediately arises grave danger that the bulwark of defense may become a bulwark of obstruction. While much of the past is of the highest value, the present loudly demands changes in the direction of a greater degree of socialization, an acceptance of the newer ideas of justice and equality.

6. The practical application of these new lines of development will appear in a new interpretation of our constitutional phrases. Instead of saying, as did the court in *People ex. rel. Rodgers v. Coler*,²¹ that "A law that restricts freedom of contract on the part of both the master and servant cannot, in the end, operate to the benefit of either;" it may be held that such a law may in the end operate to the benefit of both. With this new

²⁰ Kelly, *Government or Human Evolution*, Vol. 1, p. 360.

²¹ New York Court of Appeals, 1901, 59 N. E., 716.

view of the situation, legislation that forbids the employer from employing any one under certain prescribed conditions will no longer appear as an invasion of the freedom of the workman but rather an insurance to him of that freedom guaranteed to him in the constitution. Freedom of contract, after all, is not an end in itself. It is clearly a means of accomplishing an end. When that end is defeated by the means that are intended to accomplish it, then it seems that the means may fairly be held to be unconstitutional. That end may be expressed as "life, liberty and pursuit of happiness", "life, liberty and property", or "social justice". They must be the same. If legal limitation of freedom of contract furthers the ends of social justice by equalizing the conditions of bargaining, it cannot be in violation of the real purpose of the constitution. If the things of fundamental importance are to remain in our present industrial state and at the same time social justice be realized, competition must be preserved as a factor in distribution between employer and employee. Strengthening the employee should be allowed if in fact it equalizes the competition. This question of fact cannot be answered in generalizations from a discarded political philosophy.

Thus our view changes and regulative laws heretofore held unconstitutional are in fact a protection to constitutional privileges and therefore a constitutional necessity. They are not only not positively unconstitutional; they are positively constitutional. They both modernize and vitalize these honored phrases and the constitution is given a new and larger life. So a new meaning is given to the constitution. The way is opened for it to do for twentieth century civilization what it has done for nineteenth century civilization.

CONSTITUTIONALITY OF WORKMEN'S COMPENSATION ACTS.

H. V. MERCER.

Position.

Can we pass constitutional laws in this country that will change the basis of recovery by an employee for injuries received in, and arising out of, the course of his employment from that of negligence or fault of the employer to that of a risk of the industry or industrial insurance?

Our answer is in the affirmative, provided our courts give to the police power that breadth of vision consistent with the origin and increasing growth of the general welfare—if they treat it with the breadth it deserves and that which other great subjects have received.

Various estimates covering the industrial accidents of this country place the number at from 300,000 to 2,000,000 per year. A safe estimate would seem to be 500,000.

The total losses in killed and wounded in the Union Army was 385,245. (See Edwin Emerson, Jr. History of 19th Century Year by Year, p. 1426). The same authority puts the total killed in the Confederate Army at 94,000. Of course there were not so many men employed as are now in our industries; but the whole Confederate Army—valient men fighting for their liberty as they saw it—was unable to kill and cripple as many Union men in five years of war as are killed and crippled in our industries in a single year now. Indeed our Union Army—one of the ablest ever congregated—

comprising 2,898,304 enlistments, of which 2,772,448 were actually engaged, with \$6,165,237,000 devoted to their cause, were only able to kill approximately the number of men that the railroads and mines now kill in the same number of years.

As early as the first message of Benjamin Harrison to Congress in 1889 we find this language, later quoted by the Supreme Court in sustaining the safety appliances Act:

Johnson v. Southern Pacific Company, 196 U. S. 1.

"It is a reproach to our civilization that any class of American workmen should in the pursuit of a necessary and useful vocation be subject to a peril of life and limb as great as that of a soldier in time of war."

The simple appreciation of these facts impresses all human minds with the fundamental truth—*the general welfare of the United States is not being reasonably protected in this respect.*

Compensation is based only on fault, now.

Whatever the solution, it probably will come by placing the economic risk upon both labor and capital jointly, to be at least partially administered by the community, and in such a way as to make that serve the two purposes of

(a) Prevention.

(b) Protection, when there is no prevention.

Can we do it in America?

Certainly none can analyze the political philosophy of the times and read our system in its setting without coming to the conclusion that the compact theory was the basis of our constitutions.

Willoughby, *Nature of State*, Ch. IV, p. 62.

Lowell's *Essays on Government* (social compact).

Golden v. Stonington, 4 Conn., at 285.

Calder v. Bull, 3 Dall., L. Ed. 651.

See Note from Coke, 19 Dill. Mun. Corps.

In *Munn v. Illinois*, 94 U. S. 113, the court said:

"When one becomes a member of society, he necessarily parts with some rights or privileges which, as an individual, not affected by his relations to others, he might retain. * * * * * From this source come the police powers, which as was said by Chief Justice Taney in *The License Cases*, 5 How. 583, 'are nothing more or less than the powers of government inherent in every sovereignty—that is to say,—the power to govern men and things.' Under these powers the government regulates the conduct of its citizens one towards another, and the manner in which each shall use his own property, when such regulation becomes necessary for the public good."

In *Holden v. Hardy*, 169 U. S. 366, (L. Ed. 380) the court said:

"While this power is inherent in all governments, it has doubtless been greatly expanded in its application during the past century, owing to an enormous increase in the number of occupations which are dangerous, or so far detrimental to the health of the employees as to demand special precaution for their well-being and protection, or the safety of adjacent property."

"While this power is necessarily inherent in every form of government, it was, prior to the adoption of the Constitution, but sparingly used in this country."

This would seem to indicate that our compact has increased this power as would be presumed.

In *Mugler v. Kansas*, 123 U. S. 623, it is said:

"State legislation, strictly and legitimately for police purposes, does not in the sense of the Constitution, necessarily intrench upon any authority which has been confided, expressly or by implication, to the National Government."

In *Adair v. United States*, 208 U. S. 161, the court in referring to the police powers said:

"Both property and liberty are held on such reasonable

conditions as may be imposed by the governing power of the state in the exercise of those powers, and with such conditions the 14th amendment was not designed to interfere....." (Consolidated Coal Co. v. Illinois, 185 U. S. 202, L. Ed. 872. State v. Smith, 58 Minn. 35.)

In the case of N. P. v. Duluth, 208 U. S. 583 (L. Ed. 630) the court said:

"But the exercise of the police power cannot be limited by contract for reasons of public policy; nor can it be destroyed by compromise; and it is immaterial upon what consideration the contracts rest, as it is beyond the authority of the State or the municipality to abrogate this power so necessary to the public safety." *Cosmopolitan Club v. Commonwealth of Virginia*, 208 U. S. 378 (L. Ed. 536).

In *Buffington v. Day*, 11 Wallace, 113 (L. Ed. 122), it is said:

"It is a familiar rule of construction of the Constitution of the Union, that the sovereign powers vested in the state governments by their respective constitutions, remained unaltered and unimpaired except so far as they were granted to the Government of the United States."

In *United States ex rel, Turner v. Williams*, 194 U. S. (L. Ed. 979-986), Mr. Justice Brewer gives a separate concurring opinion in which, referring to the 10th Amendment, we find this language:

"The powers the people have given to the general government are named in the Constitution, and all not there named, either expressly or by implication, are reserved to the people, and can be exercised only by them, or upon further grant from them."

In *Twining v. New Jersey*, 211 U. S. 78, it is said:

" * * * that in our peculiar dual form of government nothing is more fundamental than the fuller power of the state to order its own affairs and govern its own people, except so far as the Federal constitution expressly or by

fair implication has withdrawn that power. The power of the people of the states to make and alter their laws at pleasure, is the greatest security for liberty and justice."

There is no reason, except the Constitution, why America is not as well entitled to protect the general welfare as is any foreign state. Indeed it has been the boast of the admirers of our system that it sufficiently restrains, yet amply protects all. Is this question an exception to the rule?

Did the framers of this admirable system so far protect individual property rights as to hamper their reasonable regulation when the general welfare requires the protection of personal rights?

In the case of *Mayor, Alderman, et al. of New York v. Miln*, 11 Peters, 102, when the question was whether the state had controlled international commerce, the court said on page 134:

"The power, then, of New York, to pass this law having undeniably existed at the formation of the Constitution, the simple inquiry is, whether by that instrument it was taken from the states and granted to Congress; for if it were not it yet remains with them.

"If, as we think, it be a regulation, not of commerce but police, then it is not taken from the States."

And:

"We choose rather to plant ourselves on what we consider impregnable positions. They are these: that a state has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that, consequently, in relation to these, the authority of a state is complete, unqualified and exclusive."

See *Pierce v. Van Dusen*, 78 Fed. 693 (Decision by Harlan, Taft and Lurton). *Ry. Co. v. Huson*, 95 U. S. 465; *McLean v. Denver etc. Ry. Co.*, 203 U. S. 38.

The police power of the several states was never delegated by the Federal Constitution, nor prohibited by that instrument from reasonable state exercise.

A search of the Federal Constitution fails to reveal any delegation of the police power within the states; neither the Federal nor state constitutions have prohibited it to the state, except to the extent of requiring equal, reasonable, and lawful regulations:

In *Beer Company v. Massachusetts*, 97 U. S. 25, the court said:

"If the public safety or the public morals required the discontinuance of any manufacture or traffic the hand of the legislature cannot be stayed from providing for its discontinuance by any incidental inconvenience which individuals or corporations may suffer. All rights are held subject to the police power of the state."

In *United States v. DeWitt*, 9 Wall. 41, L. Ed. 593-4, through an opinion by Chief Justice Chase, the Supreme Court said, in relation to a Federal law making it a misdemeanor to mix certain kinds of oils:

"As a police regulation relating exclusively to the internal trade of the states, it can only have effect where the legislative authority of Congress excludes territorially all state legislation as for example in the District of Columbia. Within state limits it could have no constitutional operation. This has been so frequently declared by this court; results so obviously from the terms of the constitution, and has been so fully explained and supported on former occasions, that we think it unnecessary to enter again upon the discussion."

In *Mugler v. Kansas*, 123 U. S. 623, it is said:

" * * * State legislation, strictly and legitimately for police purposes, does not in the sense of the Constitution,

necessarily intrench upon any authority which has been confided, expressly or by implication, to the National Government."

This makes it evident that the police power, generally speaking, rests in the state government, except over such territory as Congress has the power to control.

State police power not delegated to the Federal government.

In *Mugler v. Kansas*, 123 U. S. 623-667, re-quoting from a former decision, it is said:

"That power belonged to the states when the Federal constitution was adopted. They did not surrender it and they all have it now—It rests on the fundamental principle that every one shall so use his own as not to wrong and injure another."

The 14th amendment not designed to destroy the state's police power.

In *Barbier v. Connolly*, 113 U. S. 27, L. Ed. 923, it is clearly held:

"It would be an extraordinary usurpation of the authority of the municipality if a federal tribunal should undertake to supervise such regulations."

And:

"But neither the Amendment, broad and comprehensive as it is, nor any other amendment was designed to interfere with the power of the State, sometimes termed its police power."

Liberty of contract between employer and employee does not mean license.

There is no appreciable constitutional difficulty in uniform state legislation for workmen's compensation acts if we treat this subject with a comprehension of the few limitations as distinguished from the fear of the many bugaboos.

The Fourteenth Amendment secures the Liberty of

Contract between Employer and Employee except when limited by the Police Power; the Exercise of the Police Power rests in the Legislative Department; the Courts interfere to uphold the Constitution only to prevent Arbitrary power from being exercised under cover of the Police Power.

(a) The courts recognize that the employer and the employee do not stand on an equality in making their contracts. (Narramore v. Cleveland, etc., 96 Fed. 298, [6 C. C. A. Judge Taft]. Holden v. Hardy, 169 U. S. 366. Harbison v. Knoxville Co., 183, U. S. 13).

Freedom of Contract is Liberty.

This is the great Federal Constitutional question with respect to Workmen's Compensation Acts. Can we say that employer and employee must stand by regulations upon this question. *In my opinion, Yes.*

The police power—the public power to protect the interests of humanity for public preservation is the safety valve here.

In Adair v. U. S., 208 U. S. 161 (L. Rd. 436), Mr. Justice Harlan re-quotes from Lockner v. New York, 198 U. S. 45, as follows:

"The general right to make a contract in relation to his business is part of the liberty of the individual protected by the 14th amendment of the Federal Constitution."

Later on the court says:

"* * * The right to purchase or to sell labor is part of the liberty protected by this amendment, unless there are circumstances which exclude the right."

Liberty of contract not absolute when applied to employer and employee in dangerous employments.

In Holden v. Hardy, 169 U. S. 366 (L. Ed. 780), the Supreme Court held

"This right of contract, however, is itself subject

to certain limitations which the states may lawfully impose in the exercise of its police powers."

The court also said:

"Of course, it is impossible to forecast the character or extent of these changes, but in view of the fact that, from the day Magna Charta was signed to the present moment, amendments to the structure of the law have been made with increasing frequency, it is impossible to suppose that they will not continue, and the law be forced to adapt itself to new conditions of society, and particularly, to the new relations between employers and employees, as they arise"

In *Achison, etc. Ry. Co. v. Matthews*, 174 U. S. 96 (L. Ed. 909), in discussing a statute of Kansas respecting fire cases, the court said:

"But neither the amendment (14th)—broad and comprehensive as it is—nor any other amendment was designed to interfere with the power of the state, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity."

In the case of *Johnson v. Southern Pacific Ry. Co.*, 196 U. S. 1, it was held that the equipment of cars with automatic couplers might be required by Congress.

In *Knoxville Iron Co. v. Harbison*, 183 U. S. 13, the court said:

"But it is also true that, inasmuch as the right to contract is not absolute in respect to every matter, but may be subjected to the restraints demanded by the safety and welfare of the state and its inhabitants, the police power of the state may, within defined limitations, extend over corporations outside of and regardless of the power to amend charters. *Atchison T. & S. F. R. Co. v. Matthews*, 174 U. S. 96, L. Ed. 909, 19 Sup. Ct. Rep. 609."

With respect to the limitations upon the right of contract, the court said:

"It is undoubtedly true, as more than once declared by this court, that the general right to contract in relation to one's business is part of the liberty of the individual, protected by the 14th Amendment to the Federal Constitution; yet it is equally well settled that this liberty is not absolute and extending to all contracts, and that a state may, without conflicting with the provisions of the 14th Amendment, restrict in many respects the individual's power of contract. * * " (Muller v. Oregon, 208 U. S. 411 [L. Ed. 551-555].)

The majority opinion in the case of *Lochner v. New York*, 198 U. S. 45, refers to *Holden v. Hardy* as one of the cases wherein the court has treated the police powers with liberal construction, but the *Lochner* case although holding against the validity of that law admits:

"The state, therefore, has power to prevent the individual from making certain kinds of contracts, and in regard to them the Federal Constitution offers no protection."

The general control of moral conduct, health provisions and bodily protection have always been conceded to stand above individual rights of conduct. Organized society is charged with general security and protection. It must use good judgment to ascertain the necessities and execute the remedies. The individual must act in subservience to this protection and within this judgment, if such it be as distinguished from arbitrary action, the state may provide the remedy.

Indeed in *Holden v. Hardy* the court said:

"These employments when too long pursued, the legislature has judged to be detrimental to the health of the employees, and so long as there are reasonable grounds for believing that this is so, its decision upon this subject

cannot be reviewed by the Federal Courts." At page 57 the court said:

"This is not a question of substituting the judgment of the court for that of the legislature. If the act be within the power of the state it is valid although the judgment of the court might be totally opposed to the enactment of such a law, but the question would still remain: Is it within the police power of the state, and that question must be answered by the court."

It is upon this theory that the court is able to protect and preserve this power, and to hold as it did in *Muller v. Oregon*, 208 U. S. 412, L. Ed. 551, that while the liberty of contract is a property right of the individual

"Yet it is equally well settled that this liberty is not absolute and extending to all contracts, and that a state may, without conflicting with the provisions of the Fourteenth Amendment, restrict in many respects the individual's power of contract."

REMEDY

What then is the remedy? We answer:

1. Repeal the common law remedy as to hazardous industries. (*Smith v. Alabama*, 124 U. S. 465. *Martin v. Pittsburg*, 203 U. S. Snead v. Central of Georgia Ry. Co., 151 Fed. 608.)

Snead v. Central of Georgia Ry. Co. 151 Fed. 608.

2. Enact a simple law defining the dangerous employments, and fixing a certain reasonable liability on condition that the claimant in case of dispute will submit his cause to arbitrators before he can sue—similar to the standard form of fire policies now "hypnotically" required from the company and the insurer. (*Wild Rice Lumber Co. v. Royal Ins. Co.*, 99 Minn. 190.)

3. Let the amount of damages be finally fixed by the arbitrators, but allow appeal to determine legal liability.

(*Hamilton v. The Liverpool & London & Globe Ins. Co.*, 136 U. S. 242, 34 L. Ed. 419, and cases therein cited.)

With such law enacted on a reasonable and equal basis it ought to be supported in the interests of progress, and humanity, not only as a measure of necessity, but as a matter of reasonable interpretation to further the general welfare.

In *Evans-Snider-Buel Co. v. M'Fadden*, 105 Fed. 293, (8 C. C. A.) the court said:

"When called upon to resolve questions like the one in hand, the courts have never deemed it necessary to close their eyes to the equities of the case, but have frequently permitted their judgments to be influenced by the consideration that that which the legislature has done in the way of disturbing rights acquired under existing laws was morally right, and in accordance with justice and fair dealing."

In *McCullough v. Maryland*, 4 Wheaton 416, in holding that Congress had not exceeded its powers in creating the National Bank, Chief Justice Marshall said:

"Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional. . . . But where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This court disclaims all pretensions to such a power."

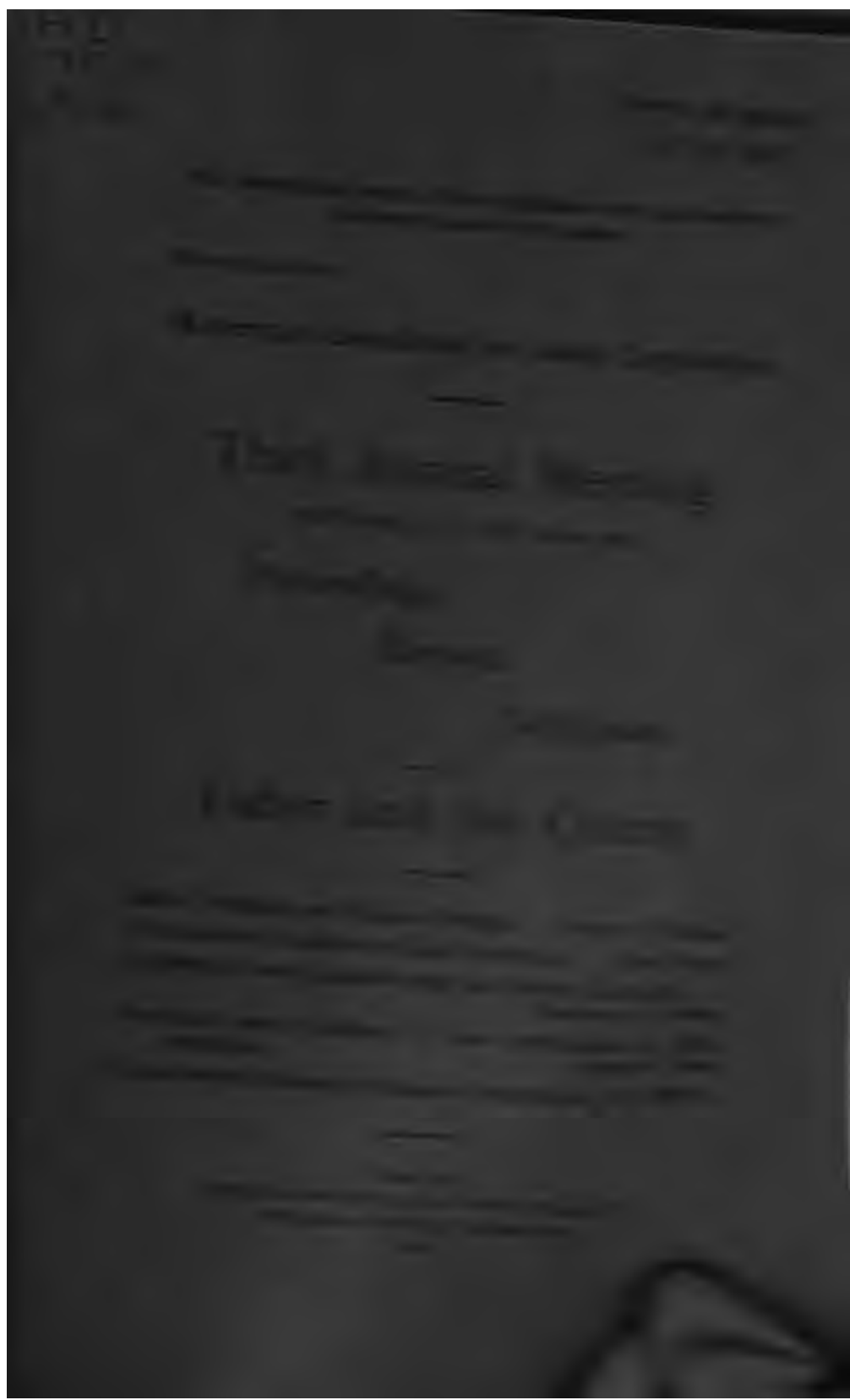
In *Knox v. Lee* 12 Wall 457, the court said:

"It is not to be denied that acts may be adapted to the exercise of lawful power, and appropriate to it, in seasons of exigency, which would be inappropriate at other times."

This whole question relates to the use of property as well as personality; it may be machinery or the right to contract—each equally property—but it is, nevertheless a limitation upon the use. This limitation is based upon the theory that the use is dangerous and the consequences must follow as a legal duty. Judged by the usual rule of following moral obligations with human law this legal duty is a proper one. Judged by the implied condition that law only recognizes the ownership and use of property by virtue of the social compact, the owner is not an absolute one except in the private sense—his rights are always subservient to the necessary public control. When he enters or adopts the social compact he impliedly so agrees.

With an evil as disastrous in totals as was our civil war; with twenty-three of the greatest foreign countries committed to the change; with several states acting through commissions to form scientific legislation on the question; with a fair, almost urgent agitation by substantially all persons who understand the evils and insufficiencies of the present system, it would seem to require a very peculiar judge to hold that a law fairly drawn as a compensation act in dangerous employments, should be held an arbitrary, as distinguished from a discreet, legislative act.

For a fuller discussion see Report of Atlantic City Conference, July 29-31, pp. 54-216.



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